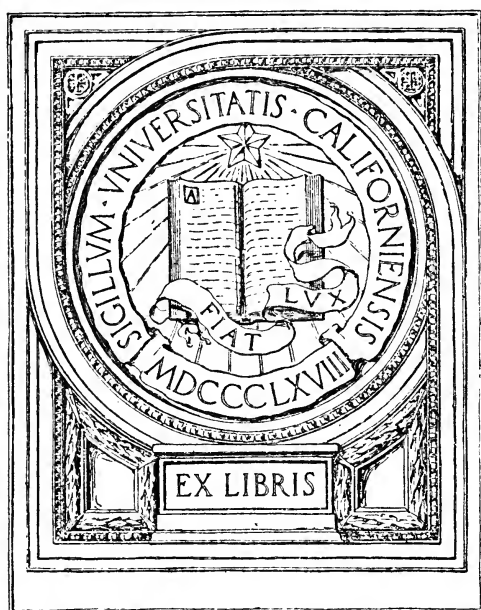


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JURGEN AND THE CENSOR

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REPORT OF THE EMERGENCY COMMITTEE
ORGANIZED TO PROTEST AGAINST THE
SUPPRESSION OF JAMES BRANCH CABELL'S

JURGEN

.....
PRIVATELY PRINTED FOR THE EMERGENCY COMMITTEE
EDWARD HALE BIERSTADT BARRETT H. CLARK SIDNEY HOWARD
.....

ONE THOUSAND NINE HUNDRED AND TWENTY
NEW YORK

TO THE
ADMINISTRATIVE

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BARRETT H. CLARK

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PREFACE

By James Branch Cabell*

In reply to the questions you ask me, nothing could be more valueless than my personal opinion of the New York Society for the Suppression of Vice and of its attitude toward *Jurgen*. Of a proceeding by which I have been robbed and vilified I cannot be expected to speak or think without bias. The part of wisdom, therefore, is silence. Yet—since a "literary" allusion is always more or less my foible as "a prosperous and affected pseudo-litterateur"—I would temper this taciturnity by referring you to the fragmentary MS. of *The Judging of Jurgen*, which if it really dates from the fourteenth century, seems curiously prophetic.

As to censorship of our reading-matter, I concede this may, in theory, be advisable. In practice, though, I can imagine no persons or class of persons qualified to perform this censorship. *Pace* the Vice Society, there is certainly a difference between pornography and fine literature, if but the difference that everybody enjoys the first where few care one way or the other about the second: and certainly the two should be appraised by diverse and appropriate standards. A work of art should therefore, in theory, be judged entirely as a work of art, by a jury of practitioners of the art concerned.

Yet, since every self-respecting author at bottom abominates his competitors, despises his inferiors, and is frantically irritated by the work of those who differ from him in æsthetic canons, such an arrangement would, in practice, only fling open more conspicuous fields wherein to flaunt the mutual spite and miscomprehension common to us creative writers. Besides, it is not difficult to forecast what sort of writers must, and would, be chosen for the judiciary, as representing the dignity of letters by the happiest combination of mediocrity and senility. No: in the end an attempt to establish a purely "literary" tribunal would result in setting over American art a death-watch of genial clergymen and decrepit college-professors; and I despondently question if their decisions would be a whit less imbecile than the present arbitrations of the society's hired spies.

With the outcome of the *Jurgen* case I have really—now—no especial concern. To the reception accorded my books during the last fifteen years this suppression of the Comedy of Justice seems, indeed, the logical and exhilarating climax. At all events, the book exists in a sufficient number of copies to be beyond destruction by anything save its own inherent inadequacies. If *Jurgen* contains the right constituents it will live, and if it lacks the stuff of longevity it will in due course die; either way, the outcome is, now, to be decided neither by me nor by vice commissioners, nor even by a grand jury.

As touches my personal part in the publication, it is in the end by *Jurgen* that I must be condemned or justified, rather than by what anyone—including me—may just now elect to say about *Jurgen*. And inasmuch as the receipt of royalty statements is not generally included among the threatened torments of the next world, it seems unlikely that this final verdict—which is in the entire transaction the one feature of any conceivable importance—will ever be known by me. So I cannot regard even this final verdict with much sense of personal concern.

*In reply to questions addressed to Mr. Cabell by the Secretary of the Emergency Committee—Letter dated May 6, 1920.

Against the charge of violating the current morality of 1920 I think that any serious defence would be a waste of effort, if only because the question must soon become of purely antiquarian interest. Our children may not improve, even from the standpoint of humor, upon our moral standards, but our children will certainly not retain them. When, as must inevitably happen before very long, our present ethical criteria have come to seem as quaint as those of the Druids or the Etruscans, or even as those of 1913 appear nowadays, offences against any one of these outmoded codes will hardly be esteemed worth talking about. Should *Jurgen* be remembered ten years hence, it will, through being remembered, be amply exonerated: whereas if *Jurgen* be forgotten, the book will then of course be violating nobody's moral sensibility. Time thus lies under bond to silence, whether with praise or with oblivion, all these aspersions; and willy-nilly I must defer to time.

None the less do I still believe that *Jurgen* is, as originally labeled, "a book wherein each man will find what his nature enables him to see"; and when anyone confesses that he finds therein only "offensiveness, and lasciviousness, and lewdness, and indecency," I must make bold to take the announcement as a less candid summary of the book's nature than of the critic's.

What can be done, you ask me, to better the present literary situation? Not much, I fear: for we contend against well-meaning and courageous persons who fight for high aims. The most fantastic feature of this droll affair is the profound sincerity of its participants upon both sides. You and I may know—and welcome, as the saying runs—that we are in the right so far as goes the unhuman abstraction called rationality. But the officers and backers of the society's imbecilities, also, quite honestly believe they are engaged in praiseworthy work when, to cite a recent example, they hale *Mademoiselle de Maupin* into the police courts. Indeed, they appear to be inebriated to these antics by very much the same real love of virtue which incites some of their congeners to burn an unruly negro as a torch to illumine their reprehension of lawlessness, and yet others to express their disfavor of intemperance by decreeing that wine is too atrocious a compound to be employed for any purpose except to symbolize the blood of Jesus Christ. In the face of so many laudable intentions thus obscurely communicated, we can but deduce that whenever stupidity and high morals pig together they beget an offspring that is doubly cursed with zealotry and toxic aphasia. Nor, of course, does it appear quite pious to contend against these natural phenomena.

At all events, you and I are in the negligible minority. I need hardly remind you that the officers of the society have embattled back of them all the complacent middleheadedness of the average pew-renting American, who from the first has rather fretfully resented any talk about "art." Mr. Paul E. More, in one of the letters relative to the *Jurgen* imbroglio, has nicely summed up this popular point of view: "I am not at all in sympathy with a group of writers who would take any protest against the society as a justification of what they are pleased to call art. The harm done by the society seems to me very slight, whereas the harm done by the self-styled artist may be very great."

Now that is really the popular and, therefore, the expedient moral attitude. The morality of a democracy is, after all, a matter of elementary arithmetic: one counts the ballots (sometimes, it is said, quite honestly) in order to distinguish between right and wrong, because the voice of the people is notoriously the voice of God. It is precisely this discerning voice which has proclaimed, time and again,

that the sturdy American peerage of nature's noblemen does not want to be bothered with any nonsense about literature and art: for the reasons, first, that such fripperies play no part in honest polltax-payers' lives; and, second, that in very much the manner of this Mr. More, our reputable citizenry—obscurely and inarticulately, but none the less genuinely—resents the impudence of "self-styled artists" who presume to know more than their betters about "what they are pleased to call art."

It seems therefore eminently appropriate that in our National Hall of Statuary, along with such world-famous statesmen and shapers of human destiny as Jacob Collamer, S. J. Kirkwood, and George L. Shoup, the sole representative of our art and letters should today be General Lew Wallace, for *Ben Hur* is really the perfected expression of American ideals in literature. It is equally appropriate—I like to think—that, when judged by these ideals, *Jurgen* should be decreed "offensive, and lascivious, and lewd, and indecent."

James Branch Cabell.

*Dumbarton Grange,
Dumbarton, Virginia.*

Letter from the Secretary of the New York Society for the Suppression of
Vice to the Secretary of the Emergency Committee

April 16, 1920.

Dear Sir:

I have your letter of the 14th instant, enclosing one dollar for two copies of the pamphlet entitled "Morals, Not Art or Literature," which was compiled by Mr. Comstock a year or two before he died. I will send you these pamphlets in a day or two. We are in the midst of moving our headquarters and these matters have been packed up and it will take a little time to get straightened out in our new quarters.

Regarding *Jurgen*—In view of the fact that this case is still pending, I shall say only that this book was first brought to our attention by a correspondent who forwarded a clipping of the *New York Tribune*, with which you are no doubt familiar. Having obtained a copy of the book and read it and sought the advice of others, we are of the opinion that its publication and sale constitute a violation of law. In the usual course the book was presented to a magistrate whose opinion coincided with ours and who received the complaint and issued summonses. The defendants waived examination in the Magistrates' Court and were held for trial in Special Sessions. Subsequently, on their motion, the case was transferred to General Sessions to proceed by indictment and jury trial. It is now awaiting presentation to the Grand Jury. In addition to opinions received here, we received opinions also from Boston, Philadelphia, Chicago and Cincinnati, where the book had been sold.

As to the general work of the Society, this corporation was organized in 1873 to enforce the laws seeking to suppress traffic in obscene, lewd, lascivious, indecent, filthy and disgusting books or publications, and for other purposes. This law does not make exception as to the publications of any particular class. That is, it does not distinguish between the writings of John Doe, who has no reputation, or Richard Roe, who is a distinguished author; nor have the courts, in interpreting this law, permitted the intent of the author, expressed or implied, to influence them in their decisions. If the language of a book is lewd, or if it is of suggestive lewdness, it is a violation of the law, regardless of the literary or artistic character of the published matter. Some of the court decisions have held that a writing of an obscene character was more dangerous when couched in fine language than when set forth in crude form, and this is undoubtedly true.

This Society endeavors to perform its duties without favor to any class. If it appears that the law, which it is our duty to enforce, has been violated, we are just as prompt to proceed against an established publisher or a known author as against the street peddler who seeks to excite impure thoughts in the minds of boys by retailing questionable pictures on the public street. Any other course would lay us open to just criticism.

Some recent editorials and other comments assumed that this Society was organized to perform its duties in a limited way. There is nothing in the Act of Incorporation of the Society, nor in the statutes under which it proceeds, which would warrant such a conclusion. Of course, there has been a great amount of exaggeration as to the effect of this Society's activities. The query of the *Times*, "Is Any Book Safe?" and the editorial matter presented under that caption is, of course, puerile. It is answered by the fact that out of the thousands of books published and offered for sale during the past year action has been taken against possibly four or five. We realize very fully that it is not pleasant for a publisher or an author to be brought into court to defend his work; nor is it a particularly

pleasing duty to feel called upon to proceed against a publication which may be the result of months or years of work on the part of the producer. If laws exist they should be enforced until amended or repealed. Much of the unsettled condition prevailing in the country at the present time can be traced directly to a lack of law enforcement in many directions during past years.

Last year this Society took action against 160 defendants. Of this number only four cases had to do with book publications. Pictures of a demoralizing character were taken on search warrant to the extent of 50,000, not only in New York, but in Boston, Oswego, Rutherford, Philadelphia and Chicago. Plates for reproducing such pictures were taken to the extent of over 300. Three thousand feet of motion picture film of the most obscene character were confiscated and destroyed. In many of these cases the morals of school children—boys and young men—were directly involved. From this I think you may fairly determine that the book cases are incidental, but at the same time important features of the work which we are carrying on.

I should be very glad to have you call at our office with a view of discussing these matters more in detail, and believe that if you have any other opinion now you can readily be satisfied that no undertaking of the Society is entered into except with a view to fairly and impartially enforcing those laws which we are bound to enforce under the terms of our charter.

Yours very truly,
John S. Sumner,
Secretary.

REPORT OF THE EMERGENCY COMMITTEE

By BARRETT H. CLARK

Secretary



REPORT OF THE EMERGENCY COMMITTEE

Jurgen, "A Comedy of Justice," was published by Robert M. McBride & Company of New York City on September 27th, 1919. The author, subsequently designated in legal documents as "one James Branch Cabell," has for fifteen years enjoyed immunity from the guardians of national morals in the pursuit of his literary endeavors, publishing in that period half a dozen novels and romances, a number of short stories, a volume of verse, and a book of essays. Until the suppression of his latest book, *Jurgen*, Mr. Cabell was known among the group of readers who recognized the distinction of his work, as a writer of fastidious English, devoted to the depiction of the romantic and idealistic manifestations of human love. Mr. Cabell has been content throughout his career to maintain a position apart from the literary "world," caring neither for notoriety nor for the passing fame of the writer of best-sellers.

Those of Mr. Cabell's readers who have followed the development of his art, will have recognized in *Jurgen* the logical—one might say the inevitable—point toward which the earlier books were constantly tending.

It must be borne in mind that *Jurgen* is no isolated phenomenon; it is an integral part of the world of Mr. Cabell's imagination. It is the crowning episode of the artist's comedy of life. It seems to be his ultimate word upon the subject that underlies all his books, from *The Eagle's Shadow* to *Beyond Life*.

It is reasonable to assume that before the suppression of *Jurgen*, the New York Society for the Suppression of Vice never heard of its author. Neither Mr. Cabell nor his latest book could very well have excited the suspicions of the crusaders. Now, *Jurgen* had been on the market for over three months; a large number of copies had been sold, considering the subtle character of the book; about fifty reviews had appeared in newspapers and magazines throughout the country; and with the exception of five reviewers, whose words are quoted below,¹ no one, so far as it has been possible to determine, had hinted that *Jurgen* was in any respect "objectionable."

¹Heywood Brown, in the *New York Tribune*, Nov. 17th, 1919: "... strives to attain a Rabelaisian flavor. . . . In the hands of Cabell the joke becomes a barroom story refurbished for the boudoir. In such a refining process it becomes a little nasty."

"A. L. S. W." in the *Springfield Union*, Oct. 12, 1919: "... and so cautiously one may let it be known that *Jurgen* will be recommended to one's friends whose maturity and taste are un-

It was not until the publication of Mr. Walter J. Kingsley's letter to the *Tribune*, published January 3rd, 1920, that the trouble began. Mr. Kingsley's letter follows:

ABOUT A COLUMN

Jurgen and the Non-Reading Public

James Branch Cabell is making a clean getaway with *Jurgen*, quite the naughtiest book since George Moore began ogling maidservants in Mayo. How come? Dreiser had the law hot after him for *The Genius* and *Hager Revelly* came close to landing Daniel Carson Goodman in Leavenworth, yet these volumes are innocent compared with *Jurgen*, which deftly and knowingly treats in thinly veiled episodes of all the perversities, abnormalities and dam-foolishness of sex. There is an undercurrent of extreme sensuality throughout the book, and once the trick of transposing the key is mastered one can dip into this tepid stream on every page. Cabell has cleansed his bosom of much perilous stuff—a little too much, in fact, for *Jurgen* grows tiresome toward the end—but he has said everything about the mechanics of passion and said it prettily. He has a gift of dulcet English prose, but I like better the men who say things straight out and use gruff Anglo-Saxon monosyllables for the big facts of nature that we are supposed to ignore.

It is curious how the non-reading public discovered *Jurgen*. A few days after it appeared on the newsstands a male vampire of the films who once bought Stevenson's *Underwoods* in the belief that it was a book of verses hymning a typewriter, began saying up and down Broadway: "Say, kid, get a book called *Jurgen*. It gets away with murder."

This sold the first edition quickly. How do they discover these things?

Walter J. Kingsley.

Mr. John S. Sumner, secretary to the New York Society for the Suppression of Vice, declares, in a letter which is herein quoted, that *Jurgen* "was first brought to our attention by a correspondent who forwarded a clipping of the *New York Tribune* . . ."

After January 3rd, the game of "transposing the key" of *Jurgen* went merrily forward. An astounding exhibit of perverse ingenuity might be assembled by anyone who cared to collect the interpretations that have (since January 3rd) been fastened upon *Jurgen*. The Emergency Committee, at any rate, can testify to having re-

questioned. . . Strong meat, my masters of forty-and-something, in *Jurgen*, and if you find something of truth in a comparison between your wanderings and those of *Jurgen*, the better reason for ordering the book burned in the public square. . . . Possibly when *Jurgen* has passed through the house of the Master Philologist and its hero pronounced a nature myth and properly explained away, it will be generally read in expurgated versions for the beauty of its language.

W. H. C., in the *New York Tribune*, Oct. 18, 1919: "Mr. Cabell is not squeamish about using sex as a background for humorous situations . . ."

H. W. Boynton, in the (*New York Review*), Oct. 25, 1919: "Here are eloquence and a nimble fancy, a darting eye and a musing brain behind it, playfulness, malice, tenderness—indecenty. For it is a book of male humor in the good and less good senses—frank—'Rabelaisian'. . . . Our jester's erotic symbolism is over-insistent, and so mars a fantasy which contains much beauty, in substance as well as in form."

Edward S. Everett, in *The Detroit News*, Nov. 30, 1919: ". . . has as its chief quality a certain adroit and many-sided perversity."

ceived a liberal education in the refinements of moral turpitude to which those bent upon discovering nastiness can descend.

But it is not our object to pass judgment upon the minds of those who make it a business to glut over the actual or imagined indecencies of any work of art. Nor, be it clearly understood, has the Committee undertaken to defend, explain, or deny the alleged "obscenity" of *Jurgen*. Mr. Cabell has stated his case, and there is no further need to comment upon this aspect of the question.

The Emergency Committee came into existence for the purpose of protesting against a law and a particular organization having the power to prevent the circulation of works of art. Believing that *Jurgen* is a work of art, the Committee is ready to defend it on that ground alone.¹

On January 14th, 1920, representatives of the New York Society for the Suppression of Vice entered the offices of Robert M. McBride & Company with a summons for Mr. McBride and a warrant authorizing the seizure of all plates, copies and sheets of *Jurgen*. The publisher was charged with violating Section 1141 of the Penal Code of the State of New York, in publishing *Jurgen*, "a certain offensive, lewd, lascivious and indecent book." Plates and books were seized and taken away. In the absence of Mr. McBride, Mr. Guy Holt, the secretary of the company, answered the summons, and appeared in court the following day. The hearing was set for January 23rd. The formal charge, a copy of which follows, was presented on January 15th:

¹By way of indicating that there are at least two ways of looking at *Jurgen*, we print the following copy of an affidavit:

"The undersigned, Paul Jordan Smith, a lecturer for the University of California, Extension Division, and for ten years occupied in either reviewing books or teaching general literature, hereby declares that he had read and given lectures on the books of one James Branch Cabell, and that he has found them clean, and wholesome and stimulating, both in content and expression; and that in his experience with the classes of adult men and women no one has found them in any sense objectionable.

"He further affirms that in a course in *The Development of the Novel* given in Los Angeles, California, and ending in January of this present year, 1920, he lectured on *Jurgen*, a novel by the aforementioned James Branch Cabell, and that it was read by his class without criticism; on the contrary it received the highest praise.

"Finally the undersigned declares that, in his opinion, *Jurgen* is a notable contribution to American literature, and far from being obscene is a fine and enduring piece of fiction, suitable for general reading.

(Signed)

Paul Jordan Smith.

Claremont, California.

February 18, 1920.

Subscribed and sworn to before me this 20th day of February, 1920.

(Signed) Harry F. Belcher, Notary Public.

"January 15th, 1920.

John S. Sumner, Agent New York Society for the Suppression of Vice, being duly sworn, says: That on the 6th day of January, 1920, and prior, and sworn thereto at the city and county aforesaid Robert M. McBride & Company, a corporation, and Guy Holt, manager of said corporation, Book Department, did at No. 31 East 17th Street in the city and county aforesaid, unlawfully print, utter, publish, manufacture and prepare, and did unlawfully sell and offer to sell and have in their possession with intent to sell a certain offensive, lewd, lascivious and indecent book, in violation of Section 1141 of Penal Code of the State of New York. At the time and place aforesaid, the said Robert M. McBride & Company by and through its officers, agents and employees did print, publish, sell and distribute and on information and belief of the said Guy Holt did prepare for publication and cause to be printed, published, sold and distributed a certain book entitled *Jurgen* by one James Branch Cabell, which said book represents and is descriptive of scenes of lewdness and obscenity, particularly upon pages 56, 57, 58, 59, 61, 63, 64, 67, 80, 84, 86, 89, 92, 93, 98, 99, 100, 103, 104, 105, 106, 107, 108, 114, 120, 124, 125, 127, 128, 134, 135, 142, 144, 148, 149, 150, 152, 153, 154, 155, 156, 157, 158, 161, 162, 163, 164, 165, 166, 167, 168, 170, 171, 174, 175, 176, 177, 186, 196, 197, 198, 199, 200, 203, 206, 207, 211, 228, 229, 236, 237, 238, 239, 241, 242, 271, 272, 275, 286, 321, 340, 342, 343, thereof, and which said book is so obscene, lewd, lascivious and indecent that a minute description of the same would be offensive to the Court and improper to be placed upon the records thereof: Wherefore a fuller description of the same is not set forth in the complaint."¹

On January 23rd, Mr. Holt appeared in court, pleading Not Guilty.

¹ "The second count of the indictment did not set forth the book, or any part thereof, but alleged that it was so obscene that it would be offensive to the court and improper to be placed on the record thereof, and therefore the jurors did not set it forth in the indictment." (1821) Conn vs. Holmes, 17 Mass., 336.

"The rules of criminal pleading do not require the indictment to set forth the evidence, or to negative every possible theory of the defence." Evans vs. U. S., 153 U. S., 584.

The prosecution, then, may be assumed to state facts, whereas the defence is merely stating theory.

The case was then committed for trial in the Court of Special Sessions. Two weeks later Mr. Holt, representing the publisher, appeared before the Court of Special Sessions. The trial was set for March 8th.

In February the publisher retained Mr. John Quinn, of Quinn and Crowell, to act as trial counsel. Mr. Quinn appeared before Judge Malone in the Court of General Sessions and moved for a transfer of the case to the Court of General Sessions. The motion was granted and the case placed on the Grand Jury docket. The Grand Jury indicted Guy Holt, Robert M. McBride, and Robert M. McBride & Company, on a charge of violating Section 1141 of the Penal Code of the State of New York.

On May 17th the publishers pleaded Not Guilty. They are now awaiting trial, the date for which has not been fixed.

Shortly after the action of the so-called "Vice" or "Comstock Society" became known, Edward Hale Bierstadt, Sidney Howard,¹ and the writer of the present report, organized themselves into an Emergency Committee for the purpose of drawing up and distributing a protest against the action of the Society in suppressing *Jurgen*, and in general against the practices of that Society which, in their opinion, constitute a menace to the development of American art, and a nuisance to American publishers and readers.

The Emergency Committee, realizing that no time was to be lost if their protest were to be effective before the trial, determined to distribute copies of the protest without forming a "society" or enlisting the support of the Authors' League of America,² presumably the proper organization to undertake such work.

A short list of writers was first compiled, and the following form-letter, together with the protest, sent out:

¹Mr. Howard, after the termination of the active work of the Committee, withdrew from it. While he has been, and is, in hearty agreement with the aims of the Committee, he cannot be held responsible for the final report.—B. H. C.

²The Authors' League was asked what action it was willing to take, and replied that "the Committee came to the conclusion that it would be best to follow the policy which had been held for some years, that it would be inadvisable for the League to take issue on the censorship question in an individual's case. The Committee, however, is considering ways and means of taking up the general question of censorship in some effective way."

EMERGENCY COMMITTEE
Edward Hale Bierstadt
Sidney Howard
Barrett H. Clark, *Secretary*

124 East 28th Street,
New York City.
February 13, 1920.

Dear Sir:¹

We have taken it upon ourselves to draw up the enclosed protest and submit a copy, asking you to sign it and return it to us in case you agree with its provisions. We purpose sending copies of the signed protest to the press, in the hope that some more effective means may be taken to put a stop to the high-handed methods of the vice-crusaders, and in any event with the earnest desire that a number of representative American writers may put their feelings in the matter upon record.

Perhaps you have not read the book whose "morality" is called into question; if, however, you subscribe to the principles upon which this protest is based in general (or if you would even care to change the wording), and wish to reserve judgment upon *Jurgen* in particular, would you kindly make this clear and authorize us to put your name down among those who protest "in general"?

We ask you to overlook this method of writing to you, but as immediate action is required (the trial is set for March 8), and we have more letters to send out than we could possibly write by ordinary means, we trust you will pardon the mimeograph.

Faithfully yours,
Barrett H. Clark,
Secretary.

Below is the protest form:

EMERGENCY COMMITTEE
Edward Hale Bierstadt
Sidney Howard
Barrett H. Clark, *Secretary*

124 East 28th Street,
New York City.
February 14, 1920.

We, the undersigned, American writers vitally concerned for the legitimate freedom of artistic expression in the United States, protest

1. Against what we hold to be the arbitrary and unjustifiable charge preferred by the New York Society for the Suppression of Vice against the publisher of James Branch Cabell's *Jurgen* (as an "offensive, indecent, lewd, obscene, and lascivious" book), and the suppression of the same pending trial; and

2. Against the methods of that Society, an organization which we claim to be an unrepresentative body of people exercising disproportionate influence, and which by repeated actions in suppressing many works of genuine artistic merit, tends to discourage and inhibit the development of literature;

3. Against the law, which was framed by the founder of the Society, and which is eminently unfair in that it makes no distinction between art and pornography and is so worded as to afford the publisher or writer no fair opportunity for defence; and

4. Particularly against the practices of the New York Society for the Suppression of Vice as an extra-legal body, judging works of art and literature by no standards except such as it wishes to set up in the discovery and sequestration of individual passages deemed to be indecent and immoral. Not only does this Society arbitrarily seek out particular passages, it casts upon the whole work the stigma of moral corruption which of necessity must cling to it—even in instances

¹And "Dear Madam:"

where the publisher is finally exonerated—for years to come. The judging of works of art by those who are manifestly unfit for the work, who deem it their duty to look only for the indecent, cannot but result in unfairness both to authors and publishers.

Believing that the existence of a law of this sort, and of an organization like the New York Society for the Suppression of Vice, which oversteps the legitimate field of its defensible activities in suppressing pornography, is a very real menace not only to literary art but to the reading public at large, we have hereunto affixed our signatures in protest against both the law and the Society which makes it a business to see that the law is enforced.

Signed.....

To be returned to
Barrett H. Clark
124 East 28th Street
New York City.

At the same time, a very few forms were sent to foreign writers who were at the time in America. Each protest was marked "Specimen," as the forms were not intended to be signed by any but Americans. In spite of this, the protest was signed unconditionally by Hugh Walpole, Padraic Colum, St. John Ervine, and Gilbert Cannan.¹

The returns from the first series of letters were gratifying. In view of the fact that over half of the addresses were taken from an edition of *Who's Who* compiled during the War; that (as was later learned) about thirty persons written to were abroad; and finally that a number of letters were later received explaining that the forms arrived too late to be sent in before March 8th, the returns were surprisingly large.

A few days later a second list was prepared. The first comprised American writers; the second, though including some writers, was extended to include artists, critics, editors, publishers, musicians, etc. This was likewise a small list. A letter similar to the first, together with the protest—both of which were modified by the exclusion of the words "American writers"—was sent out as before. The clauses in the protest and the letter allowing those who wished to protest "In General," in the event of their not having read *Jurgen*, was in almost every instance underlined.

The returns this time were not so large. It was hardly to be expected that members of professions not immediately interested in the production or consumption of literature should rally to the support of a book with which most people were not familiar. One could not reasonably expect politicians and other public servants to

¹Later by George Moore, to whom a protest was sent.

compromise their political careers (during election year) by protesting against an organization whose professed purpose it was to purify the country. But it was disappointing to find that of the thirty-odd publishers who were asked to support an effort to curb the activities of an organization that potentially threatened them all, only seven replied.

Had it been possible, the Committee would have liked to issue copies of the protest for general circulation. But time and a lack of funds prevented this. However, a few booklovers, as private individuals, did sign the protest, adding their names to forms sent to other persons. Their presence in the lists of signers is appreciated, but it must be understood that no effort was made to arouse the interest or enlist the sympathy of the general public.

There were eight persons known to have refused signing the protest; eight, that is, who took the trouble to state their reasons. We publish the letters of four of these. The others were from: (1) a prominent American artist who agreed with the aims of the Committee on principle, but knowing nothing about *Jurgen*, assumed that "it probably is smutty—most American things are." He refused to allow his letter to be published, on the ground that he knew nothing of the book. (2) From a university professor who believed and courteously stated that he thought the book—what he had read of it—objectionable. (3) From a novelist who knew nothing of *Jurgen* or the Society, and wished to act in accordance with the Authors' League. (4) From a novelist who asked to be forgiven for not implicating herself in a matter of which she knew nothing.

It was at first intended to give wide publicity to the protest and the lists of signers, but as the case developed, and as the Committee became more familiar with hitherto unsuspected aspects of the situation, they determined that for the time being nothing further should be done with the protests. It was later apparent that the protest method was all very well so long as it was used simply as a safety valve for the pent-up feelings of indignant writers. It was also one means of creating a necessary solidarity among a group that is by no means organized for effective concerted action. But the mere signing of protests cannot amend a law or take the jurisdiction over works of art out of the hands of the incompetent, the unsympathetic, the ignorant, and the fanatical.

A knowledge of the laws framed by Anthony Comstock and the methods employed by the society which he founded will afford one the best insight into the problems to be faced. There is no use in trying to do away with any vice society¹ so long as the law is so phrased as to allow that body to arbitrate in questions of art, as distinguished from pornography.

The Emergency Committee, therefore, came to the conclusion that to carry on an extended campaign, either on behalf of *Jurgen* or of any other book, or against any particular society, could not materially improve the situation.

So far as any definite conclusion can be reached as to the most effective method of suppressing the suppressors, it is this: that the law as written by Anthony Comstock and enforced by his successors must be radically amended. That law has not only permitted gross injustice to writers, painters, sculptors, and scientists—without mentioning publishers—it has by reason of its skillfully worded terms permitted the establishment of a mass of judicial decisions and interpretations the application of which is contrary to the first principles of liberty.²

Those Sections of the Codes of the United States and of the State of New York concerned with the publication and distribution of obscene books, are reprinted in an appendix to the present volume. To these are added a few of the judicial decisions just referred to. These are reprinted from the pamphlet entitled *MORALS, Not Art or Literature*.³

The Emergency Committee is now engaged in drafting an amendment to the laws. It may be briefly stated that the efforts

¹Even were it possible to convict the members and officers of such a society for the very vices it aims to suppress and thereby discredit it in the eyes of the community, the law remains. For an instance of this method of attack, see George Moore's *Autobiography*, p. 120 and following, wherein is related the story of Captain Verney of the English Vigilance Society. "And one day the news arrives at the office of the Vigilance Society that Captain Verney has been charged with the abduction of a young cook. . . . A few days after the magistrate sent Captain Verney for trial." And yet—George Moore is still prosecuted, though he has lately published his books for private circulation, the only means that will allow him the freedom he requires.

²For a discussion of the whole subject, see H. L. Mencken's illuminating article on *Puritanism as a Literary Force*. (*A Book of Prefaces*, Knopf, New York.)

³This may be procured from the offices of the Society, at 215 West 22nd St., New York. The price is fifty cents.

of this Committee are directed toward the passage of a law requiring that the work of art, as distinct from the pornographic book or picture, be judged—should its "morality" be called into question—by those qualified to pass judgment upon it. The phrase "work of art" must, of course, be made to embrace every work that may be considered a serious effort; it would be patently absurd to ask any jury to decide whether a book or picture was or was not an enduring masterpiece. But the distinction between the book that treats sex as a part of life and that which treats sex primarily for the purpose of stimulating the sexual instinct; is easily drawn.

No law or system of legal precedent which upholds, nay demands, the suppression of a book wherein a single passage may be deemed to tend "to the corruption of public morals," or which may be construed as tending "to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall," can be logically defended in a free country. The defendant, under the present laws, is not even allowed to argue that the great masterpieces of all time are as "offensive" as that for the publication of which he is indicted.

Under the existing State and Federal laws the defendant has no chance to fight his case upon its own merits. The law which allows the "morality" of the works of Boccaccio, and Shakespeare, Gautier, Thomas Hardy and George Moore, to be judged by magistrates and juries, is as antiquated as the Code of Lycurgus.

If vice societies are to be tolerated at all—and the question is an open one—they should confine their efforts to a definitely restricted field. The suppression of books and pictures produced primarily for the purpose of stimulating the sex impulse is perhaps necessary, though it is not beyond all reason to suppose that the same (innate decency) which forbids one parading the streets naked might curb the practice of distributing offensive post-cards. The New York Society of the Suppression of Vice has—in its own fanatical way—suppressed a vast amount of obscene matter which ought not to fall into the hands of the "susceptible." It is, by long experience of and first-hand acquaintance with the sort of matter it suppresses, competent to examine and judge the perverse, the indecent, the obscene. Where the vice crusaders have erred, and to this day continue to err, is in imagining that the obscene is an absolute, unvarying entity, to be judged without reference to what may be termed the context. Because the naked human body can and does arouse "impure" thoughts in the "susceptible," they proceed on the assumption that nakedness is in itself obscene. Long practice in

the detection of "offensive" matter has rendered the vice crusaders expert in scenting obscenity not only where it exists but where it does not.

But if a passage in a book or single words taken from their context are sufficient grounds for legal suppression, nothing would be more logical than to suppress the dictionary—a volume containing more offensive, lewd, lascivious, and indecent words than any other book in existence. The law as amended must first of all be so written as to distinguish between the frankly and purposely offensive, and (whether it be "exciting" or "stimulating," or not) the serious work that attempts to reflect and interpret life. The first is, of course, dangerous for the "susceptible;" the second is not. The frank treatment of every aspect of life in the hands of an artist, is likely to affect the young and the susceptible only in so far as life itself will affect them. When the vice crusaders attempt to suppress what is exciting and stimulating in great art—which of necessity treats sex as the tremendously moving power it is—they are in effect attempting to suppress sex itself.

The vice crusader, unable, by reason of long association with nastiness, to differentiate the clean from the unclean, seeks to impose his own necessarily biased standards upon everyone who might perchance be moved by an instinct the nature of which the professional crusader cannot understand.

In other words, the Bible, Shakespeare and Rabelais—and all of them ought under our present laws to be suppressed—are in a class by themselves. If the enduring masterpieces of the world are to be suppressed, can we hope ever to strive to produce new masterpieces? And it may here be once more emphasized that every time not only a new book but a "standard work" is suppressed, the imagination of the "susceptible" is stirred by "unclean thoughts." For it is not until the vice society hales into court the offending distributors of books like *Mademoiselle de Maupin* that the real harm begins. *Jurgen* would in all probability have circulated among the mature who read Baudelaire and Anatole France, George Moore and Thomas Hardy, had not the New York Society for the Suppression of Vice advertised its actual or imagined "obscenity" to thousands of young people, thereby inviting them to read it for the sole purpose of discovering its "obscenity."¹

¹ "Now, whenever I discover that a group of my fellow-citizens are ardently working to prevent the printing and circulation of a book on the ground that you and I and everybody else would be contaminated if we were to see it, my custom is to get that book and read it."—A. F. L. in the *Baltimore Sun*, Feb. 19, 1920.

The suppression of *Jurgen* has so far resulted in the damaging of the reputation of an artist, and in the establishment of a widespread and morbid interest in the book on the part of young people of both sexes. Booksellers in many parts of the country have testified to the fact that young men and women in hundreds sought surreptitiously to buy copies of *Jurgen* after the news of its suppression was spread abroad.

But a change in the tide is to be observed. In November, 1917, Mr. Sumner brought charges against Mr. Raymond Halsey of the McDevitt-Wilson Company of New York for selling Gautier's *Mademoiselle de Maupin*. At the first trial in January, 1918, the Court dismissed the case on the grounds that the novel failed to show any evidence of "obscenity." Mr. Halsey then brought suit for damages on the ground of malicious prosecution. Judge Wagner ruled that since there was no "probable cause" for arrest, the prosecution was "malicious." Mr. Halsey was awarded \$1,800 damages. The Society then appealed. The Judges of the Appellate Court were divided as to the "probable cause," and decided that the case should go to the jury. At the second trial, before Judge McAvoy, all evidence originally submitted, establishing the place of *Mademoiselle de Maupin* as a classic and standard work, was ruled out. The Judge, in charging the jury, asserted his belief that there *was* "probable cause." The most important precedent established by this case was the Judge's insisting that the whole of the novel be read in court, in order to determine the alleged "indecentcy" of its contents. The book was accordingly read. The jury, after less than an hour's deliberation, brought in a verdict in favor of the prosecution. The New York Society for the Suppression of Vice was forced to pay \$2,500 damages and costs.

If every successful defendant were to sue for damages, the vice crusaders might think twice before deciding to bring charges.

Jurgen and the Censor goes to press before the final trial. The documents herein printed are considered to be of sufficient importance to warrant their publication at this time. It is with the hope that the volume may focus attention upon a national menace to American art and literature that it is now made public.

If further justification were needed for publishing this book, the reader is asked to consider once again the implication beneath the title of the pamphlet published by the New York Society for the Suppression of Vice:

MORALS, Not Art or Literature.

Respectfully submitted,

Barrett H. Clark.

New York City.
12th June, 1920.

“MORALS, NOT ART OR LITERATURE”*

By

EDWARD HALE BIERSTADT

*This heading, set exactly as above, is the title of a pamphlet published by the New York Society for the Suppression of Vice which sets forth the aim, purposes, and ideals of that organization.

"MORALS, NOT ART OR LITERATURE"

The above title is puzzling. Indeed, it has so little obvious or surface meaning that one is almost inclined to suspect some subtle esoteric significance. It reminds one at first glance of the immortal Gilbertian couplet:

" 'A fool is bent upon a twig, but wise men shun a bandit,'—
Which is really very clever if you only understand it."

Personally, I don't understand it at all. "MORALS—Not Art or Literature;" it is as though one said, MORALS—Not Pork or Beans. It implies a relationship that does not exist; it makes a distinction between elements that cannot be compared; it states dramatically a revelation that has nothing to reveal. It is curious, but it is not enlightening.

In all discussions and inquiries it appears to be almost axiomatic that one must begin with a definition of terms. Let us do so then, but let us make that process as short and painless as possible. We may assume, or at any rate I will, and I hope you will too if only for the sake of being companionable, that *Morals*, as it is used here, indicates a code of ethics, a formula of convention which proceeds not from any directly divine source, as when Jehovah handed the golden tablets containing the ten commandments to Moses, but through the intensely human and fallible medium of Society which through all the ages has endeavored to save its face and preserve what it has fondly believed to be its dignity at the expense of the minority, that minority which has only "the inalienable right to endorse." I do not for one instant take up the cause, if there be a cause, of the minority against the majority; the minority is well able to look after its own interests; but I do most emphatically desire to make it plain that *Morals* in this sense is as arbitrary and as artificial as our legal code. Again, I do not inveigh against that code. It is obviously essential to our well being. But, we, we human beings, made it, and we know that it is neither absolute nor divine. At best it is a very poor approximation of what we actually believe justice to be. So it is with *Morals*. They are what we have made them, and well we know that at best they are only the poor approximation of what we would have them. The imposed relationship between *morals* of this type and our legal code is too obvious to dwell upon. Witness *Jurgen*. That *morals* in the real, the actual and absolute sense would concern themselves with *Jurgen* we can-

not for one instant believe. They would have better sense, for common sense and true morality are twin sisters. Morals, or to phrase it more normally, the moralist, would well know that if *Jurgen* were true art it could no more be immoral than life itself, and he would know likewise that if it were not true art, if it were spurious, nothing in all the whole wide world could save it from extinction, not even nastiness or the moralist. It would die from sheer malnutrition and inertia. So much then for morals. We have not defined the term, it is true, but we have at least indicated a basis for understanding.

What is the case then with Art and Literature, or, not to make any distinction between the arts, Art? Oddly enough it is much the same as with Morals. We know that there is in theory an absolute standard of Art, but we do not know just what that standard is any more than we know just what the absolute standard of Morals is. So in one event as with the other; we hypothecate a working standard which will serve the practical purposes of the moment, and which changes with the flux and flow of time as change all other things which are of this world only. And Art is no more changed by artists than Morals are by moralists. When the world is ready for the change there comes the "still small voice crying in the wilderness," and the thing is done. But these Morals, this code of ethics, this procedure of behavior, these social usages, for actually they are little more, are not omniscient. They are not absolute. They may indicate the way; they can never enforce themselves. A moralist is no more capable of judging a work of art than is a pure food expert. And too the question may well be raised, are the members of such an organization as the Society for the Suppression of Vice moralists at all? No, surely not. They are experts in immorality, that is all. It is their mission, self imposed, as all intrusive missions are, to deal in the abnormal, in the nasty, in the obscene, the salacious, the pornographic. Does this then qualify them to recognize, still less to pass judgment on, a work of art, a thing of beauty? Obviously, in the very nature of things they could not. A child to them is only a potential sinner; a rose to them is merely a means of seduction. These then are our judges. I do not by any means intend to picture these men as monsters, but I do mean to suggest that it would be well nigh impossible for any men to devote themselves exclusively over a period of years to a concentration on the vicious without being affected by it. Their point of view becomes inevitably warped, their judgment is biased, and they be-

come themselves subject to perverse delusions. It is not that they are fundamentally unlovely or incapable in themselves, but that their work has created a direct tendency for them to be both of these things. Mind! I do not say that they *are* anything unpleasant. I have too great a respect for the laws of libel to say anything of the kind. But—taking all else into consideration, it would be unreasonable to suppose their attitude of mind to be entirely healthy. To this type of mind the only difference perceptible between "Intimations of Immortality," and "Imitations of Immorality" is that suggested by a rearrangement of a small portion of the alphabet.

To cite examples in a discussion of the right of censorship in art would be futile. The list of masterpieces which might and at various times have come within the scope of such a censorship would be far too long for inclusion here. It would begin with the literature of the golden age of Greece, and would proceed through the ages, carrying with it nearly every great name which genius has graven on imperishable tablets. But absurd as that would unquestionably make the censorship appear it still would be but symptomatic in its treatment of the issue. It begs the question: Does a direct relationship exist between Morals as they are constituted in this world, and Art? And, if such a relationship does exist, does it give either one of the two the right to correct, control, or to readjust the other? To both these queries we may answer No, and we may say this in our most emphatic manner. There is not nor can there ever be such a relationship, except that wholly false one which is hypothecated by the pseudo-moralists in order that they may grow fat upon the filth of their own creation in the desire that their obesity shall extend from their brains to their purses. The point of view of these persons is well exemplified by the translation of that college freshman who construed the "Apolo-gia Pro Vita Sua" as "an apology for living in a sewer." There are those, however, who do not apologize.

Negative morality is but a poor thing at best. We may trace it in the "horrible example" which prevailed upon the lecture platform in those halcyon days before Prohibition astonished its warmest adherents by becoming a fact. But the horrible example did not make Prohibition. Indeed it did little more than create a thirst, and a sense of envy, and hence after a time the horrible example was abandoned. It is so with the "suppression of vice." Granted that

it exists, and who would deny it? and granted likewise that its suppressors always know vice when they see it, which would be most difficult to prove, is suppression after all an effective measure? It has been well said that "the seed of revolution is suppression." And then too ask the psychiatrists; read Freud; delve into all the hubbub of suppressed desires and observe their distressing conclusions! But, frivolity aside, for Freud is essentially a frivolous and romantic person, suppression is not of much use in this world. It doesn't work. The doctors tell us that if we remove a bad habit, without doing anything more about it, we leave a pleasing blank spot upon which another bad habit may form. It is necessary, it appears, to create a good habit which will crowd out the bad one, and cause it to flee in dismay. The white corpuscles of health eat the red ones of disease, or vice versa. (My argument is becoming so scientific that I can't even follow it myself, so we had better begin a new paragraph). That is a positive philosophy at least, in contradistinction to suppression which is a negative one. There is that much gained, and it is not a little.

It is not necessary, however, to view this problem from a medicinal, a judicial, a legal or even from a moral standpoint; it is only necessary to look for a moment through the ever reassuring glasses of sanity, of common sense. Having done this we shall see several things clearly. One, that if the vicious, as it is artificially conceived, does not die of itself, as most of us feel that it will, no amount of suppression is going to kill it. It will simply disappear in one place to crop up in another. Advertise it, make hue and cry over it, and the unclean thing is fed, and fattens; withdraw your hand from it, and it will effect its own demise with hardly even a struggle. Next, that judgment by a jury of one's peers is an essential of our common law; and that such judgment is denied the artist when he is judged, and usually condemned in advance, by those whose livelihood is gained by seeking industriously the smut marks on the pages of life. After such a search we are able to find dirt where there was none. It is enough. If there is to be suppression let it begin at home; let the suppressors suppress themselves, and let us observe this evidence of good faith on their part with the calm of the dispassionate inquirer. It may be that in this event we shall discover that suppression is not such a bad thing after all, and if so we shall admit bravely that we were mistaken.

The judging of *Jurgen* has recoiled upon the judges themselves. It has made us acutely aware that no such judgment is possible in the very nature of things, and that even were it possible it would be ill advised; we have become cognizant of the fact that the prose-

cuting attorney has of himself created the laws under which both judge and jury act, and that the defendant is not even allowed the hollow semblance of a fair trial.

These things are unjust in a country which has taken justice for its motto; they are tyrannical in a nation that was born free; they are barbaric in an age that lays any claim to civilization; and, first and last of all, they are supremely silly. There is only one unforgivable sin in life, and that is willful ignorance, which is stupidity, for stupidity means blindness, and blindness means death, to a man, to an art, or to an era.

THE SIGNERS OF THE PROTEST

Americans Who Signed without Reservations

ROBERT HERRICK
AMY LOWELL
GRANT M. OVERTON
HARVEY O'HIGGINS
LOUIS UNTERMAYER
JOEL ELIAS SPINGARN
RALPH HENRY BARBOUR
ISAAC GOLDBERG
CLAYTON HAMILTON
FANNIE HURST
THOMAS H. DICKINSON
CARL VAN VECHTEN
SINCLAIR LEWIS
WALTER PRICHARD EATON
AMELIE RIVES TROUBETZKOY
BLISS CARMAN

["Most emphatically and with
abomination for the Society above
mentioned."]

BOOTH TARKINGTON
HARRIET FORD
MICHAEL MONAHAN
WILL PAYNE
VAN WYCK BROOKS
STEWART EDWARD WHITE
ZOE AKINS
WITTER BYNNER
UPTON SINCLAIR
JAMES GIBBONS HUNEKER
WILLA SIBERT CATHER
WILSON FOLLETT
HELEN THOMAS FOLLETT
HERBERT ADAMS GIBBONS
OTIS SKINNER
HARRY HANSEN
BERT L. TAYLOR
BOARDMAN ROBINSON

["In general and in particular."]

JOHN POWELL
ARTHUR HOPKINS
ROBERT EDMOND JONES
JOHN BARRYMORE
RUTH HALL
CLINTON T. BRAINERD
EMILIE HAPGOOD
LILITH BENDA

EDWIN ARLINGTON ROBINSON
MONTROSE J. MOSES
EDWARD SHELDON
HEYWOOD BROWN
HARRY LEON WILSON
H. L. MENCKEN
JOSEPH HERGESHEIMER
OLIVER M. SAYLER
WILLIAM ROSE BENET
PETER MICHAELSON
ARTHUR DAVISON FICKE
THEODORE DREISER

["Far more important than this
written protest would be a defense
fund subscribed by writers and their
friends, which same I have advocated
for the last five years. Then the man
could be properly defended without
expense to him."]

EDWIN BJÖRKMAN
LAWRENCE GILMAN
GEORGE JEAN NATHAN
ALGERNON TASSIN
CHANNING POLLOCK
JAMES METCALFE
AVERY HOPWOOD
B. W. HUEBSCH
THOMAS L. MASSON
JOHN MCCLURE
L. M. HUSSEY
W. J. HENDERSON
W. A. NEILSON
EUNICE TIETJENS
FANNIE BUTCHER
CARL VAN DOREN
MEREDITH JANVIER
JOSEPH A. MARGOLIS
ALFRED F. GOLDSMITH
R. M. BROECKEL
MARY HASTINGS BRADLEY
CHARLES COLLINS
THEODORE KEANE
EUGENE G. O'NEILL

["I have read *Jurgen*, and therefore
sign this all the more emphatically."]

JOHN RUHRÄH

W. WOOLLCOTT
 RICHARD H. WORTHINGTON
 HARRY C. BLACK
 JACK R. CRAWFORD
 G. LANE TANEYHILL
 ALFRED A. KNOPF
 BURTON RASCOE
 JOHN ERSKINE

HORACE B. LIVERIGHT
 ALBERT JAY NOCK
 JAMES HOWARD KEHLER
 SIDNEY HOWARD
 BARRETT H. CLARK
 EDWARD HALE BIERSTADT
 PHILIP MOELLER
 GEORGE GORDON

Americans Who Signed "In General":

SAMUEL J. HUME
 THOMAS BIRD MOSHER
 J. JEFFERSON JONES
 S. H. CLARK
 JACOB S. FASSETT, JR.
 RICHARD J. MONTAGUE
 WALTER LIPPMANN
 GEORGE CREEL
 ETHEL COOK ELIOT
 ABBIE W. FORD
 KENNETH MACGOWAN
 FREDERICK S. HOPPIN
 S. SHIPMAN
 WALTER ADOLPHE ROBERTS
 WILLIAM SALISBURY
 PAULINE BROOKS CRAWFORD
 ROBERT W. SNEDDON
 HOWARD BROCKWAY
 DANIEL GREGORY MASON
 MRS. DANIEL GREGORY MASON
 HOWARD MCA. BALDWIN
 RAY T. MORGAN
 BERTRAM B. TATE
 LANDER MACCLINTOCK
 OWEN WISTER
 HARRIET MONROE
 MARY AUSTIN
 OTTO HELLER
 CALE YOUNG RICE
 SAMUEL A. ELIOT, JR.
 HENRY SYDNOR HARRISON
 GELETT BURGESS

["Not having read *Jurgen* I can subscribe only to the general statement as above—but to that with all my heart.—G. B."]

GEORGE C. HAZELTON, JR.
 MARY E. WILKINS FREEMAN
 ["After eliminations."*]

B. M. HERRICK
 P. M. HICKS
 H. C. GODDARD
 EDWARD HOWARD GRIGGS
 JULIA C. LATHROP

["Although I am unacquainted with this book, I am fully acquainted with other actions of a similar character taken by the Society, and I believe its methods are against the public weal."]

CAROLINE FLEMING
 HARRIET ANDERSON
 HELEN M. DART
 ANNA E. RUDE
 E. NATHALIE MATHEWS
 JOHN M. MANLY
 JAMES WEBER LINN
 EDITH J. R. ISAACS
 SHELDON CHENEY
 FRANK W. RYAN
 MARIE PRIOR RYAN
 CARLO DE FORNARO
 HERMANN HAGEDORN
 CHRISTOPHER MORLEY
 WILLIAM LYON PHELPS
 RICHARD BURTON
 WILLIAM ALLEN WHITE
 CHARLES RANN KENNEDY
 ARTHUR GUITERMAN

["Not having yet read *Jurgen*, I am obliged to limit myself to joining in a general protest against what I feel to be the arbitrary, narrow-minded and unfair methods of censoring literature in vogue in the State of New York."]

GEORGE MIDDLETON
 GERALD STANLEY LEE

*See letter page 48

Foreigners Who Signed Without Reservations:

PADRAIC COLUM

RICHARD LE GALLIENNE

PIERRE TROUBETZKOY

GILBERT CANNAN

HUGH WALPOLE

["Delighted to sign—with all my
heart I agree.—H. W."]

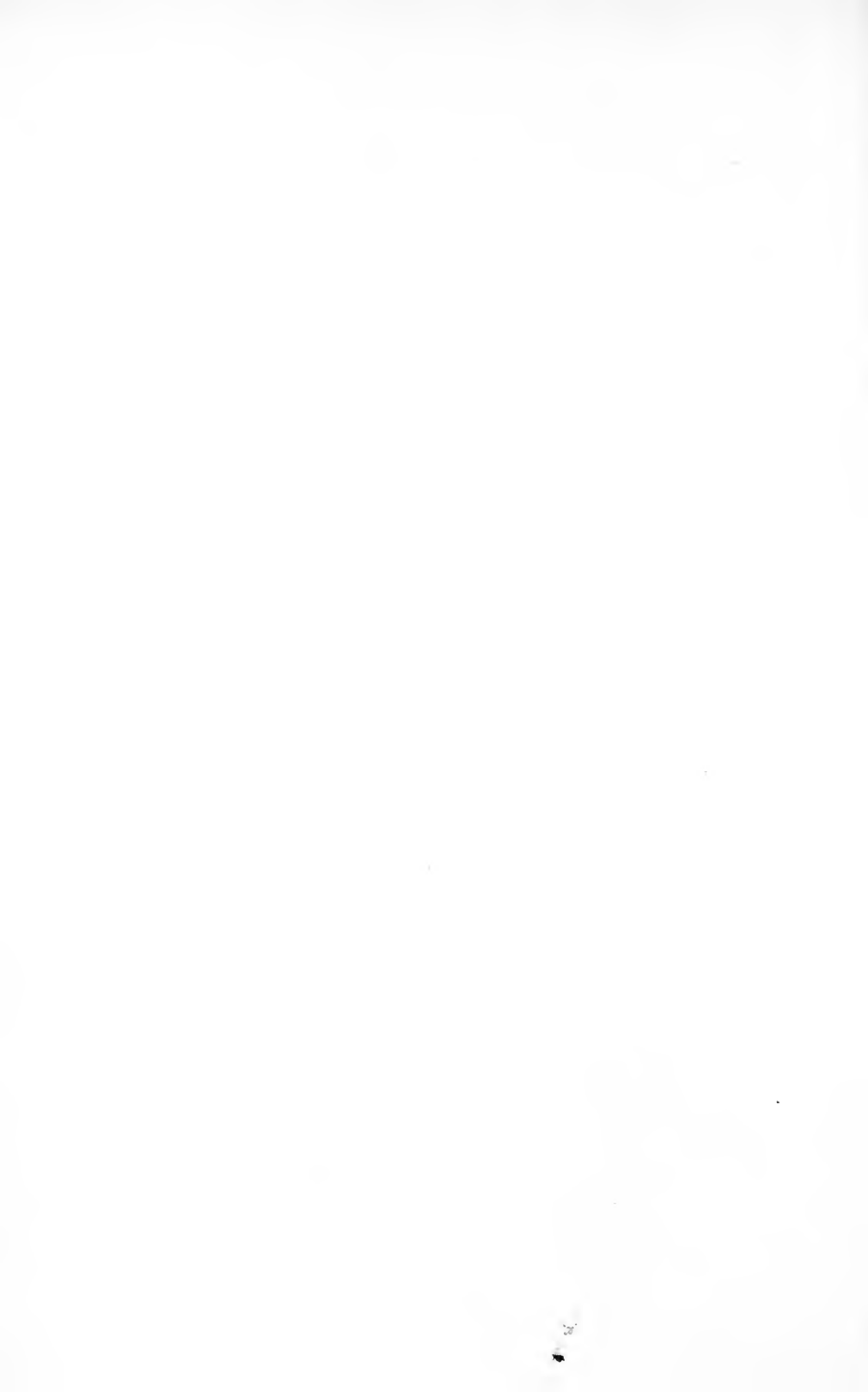
GEORGE MOORE

ST. JOHN ERVINE

{A. Z. LÓPEZ-PENHA

{LUIS CARLOS LOPEZ

[After the words "United States" in
Section 2: "One of the biggest leading
nations in the world." (Cartagena,
Colombia.)]



LETTERS TO THE EMERGENCY COMMITTEE

The following letters were received by the Secretary during and immediately after the sending out of the form letters and protests. The Committee herewith acknowledges its gratitude to the writers for their permission to use these letters.

JOSEPH HERGESHEIMER

The Dower House
West Chester, Pennsylvania

The suppression of Mr. Cabell's *Jurgen*, it seems to me, is one of the most surprising attacks on the liberty of beauty which it is possible to conceive. It is specially maddening because Mr. Cabell for years has devoted himself to a singularly pure theme—the spirituality of love. He is a novelist of grave judgment, remarkable fineness, and the master of an invaluable and delicate art. We have few such and, judging from the treatment awarded him, we shall soon have none. There is only one way by which the decency of a novel may be tested—by the writer's intention. And the fact that Mr. Cabell is accused of deliberate obscenity is, except for its tragic nonsense, laughable.

As I have already written, this attack makes the position of every serious creative writer in America precarious; it seems now positively dangerous to be honest, independent—to be anything, in short, but the mouthpiece of sentimental lies, dishonest propaganda, or current superstition. Mr. Cabell has conceived it his duty to write maturely for mature people; he preferred the expression of certain fundamental principles to trotting at the heel of a cowardly hypocrisy; and in this it begins to appear he was wrong.

Joseph Hergesheimer.

The Chicago Tribune
The World's Greatest Newspaper

Chicago, Feb. 23, 1920.

Inclosed herewith is my signature to the protest. Please accept my sincerest congratulations on the spirit you and your associates are showing in this matter. I hope that the signatures will be many and that the protest will do some good, not only in the case of *Jurgen* (in which, of course, I feel especial interest as the dedicatee), but in the matter of literature in general. The high-handed methods of the Society for the Suppression of Vice have no parallel in any civilized country.

Sincerely,

Burton Rascoe.

WM. LYON PHELPS
Professor of English Literature
Yale University
New Haven

February 25, 1920.

In general I disapprove of literary censorship and of course I am willing to be so quoted. At the same time, you must not quote me in any way that would seem to give my approval to *Jurgen*, for the simple reason that I have not read the book.

Faithfully yours,

Wm. Lyon Phelps.

February 26, 1920.

Here is your petition. Yes, I read *Jurgen* and thought it both wise and beautiful. Of course it should not be suppressed; but, on the other hand, one is not at all surprised.

Yours sincerely,

Edward Sheldon.

145 West 58th St.

February 17, 1920.

I am asked by an "Emergency Committee" to sign at *once* a protest to the publisher against the selling of James Branch Cabell's book, *Jurgen*. I have replied that I *must* read the book before answering. Can you send it to me immediately?

Sincerely,

Kate Douglas Wiggin

February, 1920.

I do not agree with the point of view in the least. There are great differences of opinion about books among equally intelligent people. If I knew the case I should be proud to resent an injustice. Not knowing it, I would not sign a protest for worlds! How could I? I do not in general believe in certain particular censorships, but how am I to tell whether I believe in this one or not without a particle of evidence?

Kate Douglas Wiggin.

1814 Sixteenth St., N. W.
Washington, D. C.

February 18, 1920.

May I suggest that you send petitions to obtain names protesting against the exclusion of *Jurgen* to all the magazines and the Press Clubs in the various cities? I am enclosing one with several signatures obtained at the Press Club in Washington.

From speaking to a number of men distinguished in literature, science, and governmental affairs, I have learned that the more understanding and important a man is, the more likely he is to know of and protest against the outrage of banning *Jurgen*, and the more likely he is to assert, as I do, that not for many years has there been produced in America a book of greater beauty, more dignity, and higher ideals.

To stop the sale of such a book, while permitting lewd plays to continue on Broadway, is precisely like condemning Rodin's *The Thinker* while permitting cheap music and picture stores all over New York to exhibit and sell openly obscene photographs . . . as they do! The only thing they have so far omitted is to ban *The Thinker*!

In fighting for *Jurgen*, you are serving the highest cause. We have had so few books of sheer magic and beauty in this country that the thought of assailing *Jurgen* is infuriating. But I am sure that when the book is considered on the bench by judges of culture and learning they will realize not only its high beauty but also the fact that its intense sophistication makes its references to sex not only unintelligible to those young girls whom, apparently, the Vice Society is trying to protect, but actually highly uninteresting to them. To be anything like consistent or just, it would be absolutely necessary for the Society to ban all medical books, and all books of jurisprudence touching on sex, if they are to ban *Jurgen*.

Sincerely yours,

Sinclair Lewis.

The New York Evening Post

February 26.

I haven't read the book. I have lost the blank you sent. If you care to include my name among the protestants on general grounds, it being distinctly admitted that I haven't read this particular work, pray do so!

Cordially yours,

Christopher Morley,

337 West 87th St.
New York City

February 16, 1920.

No—I won't join you. The Soc. for Suppression of Vice is probably making a fool of itself—as it has done on more than one occasion. But I am old enough to feel very grateful to it for the cleansing of the newsstands of N. Y. from what they were fifty years ago. I hold it to be a most useful organization; and I don't believe that there is really any danger here in the U. S. in the 20th century that any true work of art will be suppressed.

Yours ever,
Brander Matthews.

The Cleveland School of Art
Henry Turner Bailey, *Director*
Georgie Leighton Norton, *Associate Director*
Juniper Road
Cleveland, Ohio

March 1, 1920.

I do not know enough about the facts to sign the document you sent me.

While I believe that in a democracy a good deal of freedom should be given to the individual, I feel that there are limits beyond which an individual ought not to be allowed to go, and I am heartily in favor of all the societies that exist for *the reformation of the vicious*. That seems to me a more hopeful method of attack than the "suppression of vice." And yet I do believe that some sort of censorship is necessary in these days if America is to continue to be a decent place in which to bring up children.

Yours sincerely,
Henry T. Bailey,
Director.

New York, February 28, 1920.
With the greatest pleasure. To hell with them on all counts!
Lawrence Gilman.

Fifteen West Sixty-seventh St.

February 17, 1920.

My wife is only too glad to sign the enclosed paper, and only regrets that her illness prevents her from adding a personal expression of her feelings and opinion in regard to the treatment of *Jurgen*, which we read as soon as it came out and consider a masterpiece honoring American literature.

Yours sincerely,

Pierre Troubetzkoy.

New York, February 19, 1920.

I am, of course, entirely in sympathy with the manifesto which you sent me, and I only wish I could see my way clear to add my name for what it is worth. I feel, however, that the attack is to be made upon a piece of legislation which, strictly speaking, remains the domestic affair of a country where I am at the moment a visitor. And however strongly I may feel personally about the matter I think it would be a mistake for me to take any public stand about another country's internal affairs.

In England, I should be with such a protest and with as loud a voice as possible, but I think that if I did so in America, I might very justly be told to mind my own business, and that no matter how wrong the people who said it might be in other ways, they would certainly have right on their side in that.

But I wish every power to your elbow, and I hope sincerely that your note may be effective. I write in a general sense, without reference to the book in question, which I have not read.

Very sincerely yours,

John Drinkwater.

Repertory Theatre, Birmingham, England.

1455 Undercliff Ave.
New York City

I haven't read *Jurgen*, but I'm sure the case against the S.F.T.S.O.V. must be a just one since you are helping to prosecute it, and I'm glad to sign the protest.

Sincerely yours,

Harriet Ford.

Feb. 19, 1920.

United States Tariff Commission
Washington
EDWARD P. COSTIGAN
Commissioner

March 3, 1920.

A letter bearing your familiar name and calling attention to the desirability of establishing in law and recognizing in practice clear distinctions between art and obscenity, protective of the former though not of the latter, is before me. The differentiation and the principles you mention are at once so elementary and important that I am glad to join in a general expression of approval of those objects. It is highly desirable that art shall be judged by its age-old standards and by those competent to apply them, and I am one of those who earnestly trust that our lawmakers and the courts will find it possible to avoid injustice with reference to all genuinely artistic expression. The encouragement and achievements of human genius certainly deserve no less from us, and, as a lawyer, I am confident that it is possible, without difficulty both now and in the future, effectively to realize this result through the application of the reasonable and accepted tests of public welfare.

Very sincerely,

E. P. Costigan.

245 Nassau St.,
Princeton, N. J.

February 24, 1920.

I am often not in sympathy with the methods adopted by the New York Society for the Suppression of Vice. On the other hand, I am not at all in sympathy with a group of writers who would take any protest against that Society as a justification for what they are pleased to call art. The harm done by the Society seems to me very slight, whereas the harm done by the self-styled artists may be very great. I feel obliged therefore to withhold my signature from your circular protest of February 14th.

Very truly yours,

Paul E. More.

Los Angeles, Calif.

February 23, 1920.

I have received and signed and forwarded the James Branch Cabell protest. But of what use are kind words to Mr. Cabell? What he needs and what every independent thinker needs in these acute hours is something tangible and substantial in the way of aid. There should be a cash defense fund such as for the last five years I have advocated, which should be devoted to the hiring of competent lawyers and the prosecution of these cattle in every city in which they operate—and they now operate everywhere. Such a lawyer or counsel of defense could use the newspapers, as well as the courts, and make a showing of opposition at least. As it stands we have pale protests from committees who ask authors to sign them.

Incidentally, of what use is the Authors' League if not to aid in such a case as this? Is it solely devoted to the task of discovering where to sell trashy tenth-rate material and to coerce conventional publishers into paying large royalties on best sellers? The spectacle! I sympathize with Mr. Cabell, but I will do more. I will give one hundred dollars toward a defense fund if others as well or better placed than myself will do as much.

Theodore Dreiser.

P.S. If such a defense fund can be gotten together it should be urged by all publishers, producing managers, authors and playwrights, as well as book-dealers, that they contribute liberally, as they should. Let the matter of criticism of books, plays, etc., come from the Attorney General at Washington. As it is now, every little tenth-rate squeak of a minister or white slaver can now pass on France, Freud, Andreyeff, Shestov, and who not else. Think of *Noa-Noa* being barred by a mid-western vice society! These cattle must be debarred from indicting the characters and morals of their betters. Their muddy hoofs dishonor the temple. It is not for an artist to defend himself. The state should do it. But pending the awakening of the state let the writers and publishers combine to defend themselves. I will do whatever I can.

THE NEW REPUBLIC
421 West 21st St.,
New York City

February 18, 1920.

I think I belong to the "in general" protestants.

Sincerely yours,
Walter Lippmann.

Metuchen, N. J.

February 26 1920.

I have not read *Jurgen*, and feel that in fairness to author and publisher, I should not judge on either side.

I agree with you with regard to your opinions. Can you use the enclosed?

Sincerely,

Mary E. Wilkins Freeman.

I don't know anything about the Society or the law, hence the changes before signing. I hope you can use one of them. I might do better next time.

[Additional Note.]

I have not read *Madeleine*. I have not read *Jurgen*. I have not read any book to which public attention is called by the Society for the Suppression of Vice.

I do not think it fair to the Society, to publisher or author, to pass judgment upon a book or measure of which I am ignorant.

I, however, do most sincerely think that any Society, enabled by any law to cast a stigma upon an author or a publisher, unless all the reasons, not in part, but as a whole, are known to the reading public, should have for its judges a body of persons eminently calculated by their own knowledge of literature, and art, and standards of morality, to praise or condemn.

I also think that no books dealing only with the social evil should be chosen for examination, but those dealing with the drug habit and life of the underworld in such a manner as to fascinate young readers and cast a gloss upon evil which may attract their imagination.

Mary E. Wilkins Freeman.

**Comarques
Thorpe-Le-Soken**

May 17, 1920.

With reference to your Emergency Committee Protest, my view is that the police alone should have the right to prosecute an author. To give to any private society the right to prosecute on public grounds is bound to lead to grave injustice. In England the number of private prosecutions is now almost nil, and I believe that no effective private prosecution can be begun without the consent of the Attorney General. Two private societies in England took very strong objection to my novel—*The Pretty Lady*—not on moral but on sectarian religious grounds! They demanded the suppression of the book. As soon as they discovered I was a fighter they let the matter drop.

Yours faithfully,

Arnold Bennett.

1004 West End Trust Building
Philadelphia

April 19, 1920.

I cannot express any opinion about the book of Mr. Cabell, concerning which you have written me, because I have not seen it. One book of Mr. Cabell's I know, and like. He was good enough to send it to me some years ago and I had great pleasure in reading the stories that it contained. Its title, if I remember, was *A Certain Hour*.

In a general way I share the opinion which your paragraphs embody. I think, however, that it is very difficult to lay down any rule for universal application. There are certain themes which should be kept from the young, and are kept from the young in countries like France. To justify works of imagination upon these themes, genius, it seems to me, is needed. For example, the play of *Measure for Measure* would be purely objectionable in the hands of a number of modern play writers whose names I could mention. I can find but two formulas which I can express to you in words, and which, I think, represent my feelings upon the subject.

First, I think that each individual case should be judged upon its merits.

The second formula is more difficult—namely, who shall be the people to judge. Usually I find myself not completely in sympathy with the sort of people who associate themselves with the suppression of vice. While their aim is high, I am apt to think their judgment is somewhat fallible. Were I to choose a committee who should act as censors upon works of the imagination, whether they be in the form of books or in the form of plays, I should want a committee very variously selected. I should like to see upon it one or two writers of creative talent, one or two enlightened philanthropists, and several men connected with active business, such as bankers, engineers, manufacturers of broad experience in dealing with mankind. These men are apt to take very sane views and to dislike extremes. Their opinion, after conference with the other sort of people—namely, artists and moralists—would bring a leaven that I think wholesome and essential.

Yours very truly,
Owen Wister.

2970 Ellis Avenue
Chicago, Ill.

With every word in the protest you are circulating with regard to the suppression of *Jurgen* I am in the heartiest accord. If such a book can be put out of circulation by an irresponsible committee; if publishers can be penalized for issuing it; if an author for writing it can be defamed and have his just earnings sequestered, then

indeed every writer in America who wants to deal with the whole of human life will be inhibited. Could a Goethe write a *Faust* in a country where a book was dealt with in such a way? If the irresponsible Committee in New York want to fill up their time, why don't they deal with the undraped ladies in the movie posters at every street corner? These, I consider, are more likely to affect the morality of the man or the boy in the street (who, by the way, would not read *Jurgen* for money), than any book that the Committee might smell out. Why don't they deal with the headings of the newspapers that every day drag down standards of wholesome living by exhibiting—not Cocaigne, but the next street—as a place of crime and lust? I should write all this about the suppression of a mediocre book. But *Jurgen* is not a mediocre book. It is a remarkable book—imaginative, vital and philosophic. I might add, too, that it is an austere book. What Mr. Whibley has written about Congreve's *Way of the World* applies to *Jurgen*—"as austere as a tragedy, as rarefied as thought itself." The person who could be misled by such a book would not have the patience, the discipline, or the necessary regard for literature to read it. Such books are not for policemen, or for those who, dealing with vice, unfortunately for themselves, have to lay "the dyer's hand" upon an author's book.

Yours sincerely,

Padraic Colum.

115 Broadway

19th April

I signed the statement and protest as to *Jurgen* in no spirit of solicitude for art or artists. I still believe that petty bureaucratic interference will not hinder the appointed word from getting itself spoken, or picture from getting itself painted. My attention went outside of artists, who, to my view, can take care of themselves, to the mass of us, artists and others, who make up the fumbling giant Democracy and who are depending more and more upon the written word for our communications with our fellows and our understanding of our mass job. The sight of the way our channels of written communications are being muddled by prohibitors and propagandists makes me howl. We must keep them open and that means they should be left absolutely alone. No man living is big enough to interfere with these channels—policemen, parsons, or pleaders for the new dispensation. If they are closed or choked, God save us!

Faithfully yours,

Thos. H. Dickinson.

April 20, 1920.

I am of course delighted to do anything of any kind in protest against the censorship of *Jurgen*. In answer to your question, the lines from me that appeared on the jacket of *Jurgen* were, I think, part of a letter written to Guy Holt about Cabell's work. Ask him for the letter and say that I will be delighted to have you publish it.

As to adding some words, I can only say in the first place that I regard any censorship of art, organized and directed by men who are moved by political and moral feelings apart from æsthetic ones, as an impossible anachronism in any modern civilized country, and that in any case I cannot see that *Jurgen* can possibly be held to offend against morality for the simple reason that there is no incident, detail or description from one end of the book to the other that is not there entirely for reasons of truth and beauty. The author's implied intention behind his work is surely the thing that matters and I cannot conceive that anyone over the age of ten or with a mentality more mature than that could dream for a moment that Cabell is anything but an artist, first, second and last. Finally, it seems to me quite ludicrous that a time and country that permit the present revues and musical comedies that are running in New York and Chicago, that publishes in every daily paper those ludicrous and mushy columns about love and matrimony, can see nothing ironical in the prohibition of one of the few first-class works of art that America has produced in recent times. Do use this entirely honest opinion in any way that you please.

Yours sincerely,
Hugh Walpole.

THE NATIONAL ARTS CLUB
New York.
Gramercy Park
Manhattan

Not only have I not read *Jurgen*, but this is the first time I have heard of the Emergency Committee. I have been away from New York for two years, and would like to be better informed.

I know there is much stupidity enacted in the name of morality, but I cannot commit myself in the dark.

Sincerely,
Mary Austin.

[The following note was received a few days later:]

Count me as opposed to the methods of the Society for the Suppression of Vice, in general. But do not commit me to any particular book which I may not have read.

Sincerely,

Mary Austin.

New Hartford, Conn.

February 21, 1920.

Many thanks for your letter of the 13th instant.

Without having read or even heard of James Branch Cabell's *Jurgen*, it is impossible for me to sign your manifesto without some modification, as a matter of simple honesty and public responsibility. Nor do I know anything about the N. Y. Society for the Suppression of Vice, as I no longer live in that city, and do not find time to keep in close touch with its various activities. But I hate the name of the Society; not that I have any particular interest in the promulgation of Vice; but because I know very well the kind of a society parading under that name that is likely to emerge from the moral enthusiasms of a place like New York. If I am doing the Society an injustice, I regret it, and shall be glad to be put right in the matter, and if necessary make public apology for the same; but I have an inspiration that the Society is only one more of the many diabolically instigated movements now afoot to cripple free speech and to torture Art and the divinely inspired liberties thereof into the "safe," smug, comfortable bourgeois pattern of our lords and masters, the propertied and financial classes. Therefore, until further illumination comes my way, and with the modifications intimated above, I do most solemnly affix my signature also to your manifesto. I too belong to a Society for the Suppression of Vice, one inaugurated by the Lord Jesus Christ; and the Vice of Plutocracy, Oligarchy, Bourgeois Blasphemy and Intolerance is one of them.

Yours very sincerely,

Charles Rann Kennedy.

I should like to hear the names of the people who are running this Society. I dare swear I shall find them all "saved" and very rich.

The University of Chicago
The Faculties of Arts, Literature, and Science
Office of the Dean of the Junior Colleges.

I haven't read *Jurgen* and probably shan't read it, as Cabell bores me to tears. As for the law, I haven't read that either, and am not therefore qualified to protest against it. I object on principle to the suppression of free speech, but I prefer to center my energies on the protection of people who can't help themselves, rather than crusade for prosperous and affected pseudo-litterateurs like Mr. Cabell.

Yours sincerely,
J. W. Linn.

February 28, 1920.

The University of Chicago
The Faculties of Arts, Literature, and Science
Office of the Deans of the Colleges.

Having discussed the matter with Boynton, after the receipt of your extremely good-tempered letter of March 2nd, I am prepared to say I was wrong, not about Cabell, but about signing the general protest. I cannot imagine my name will be of any service; but by way of crying peccavi, I shall authorize you not only to use it, but to call on me for any service I can render.

Yours sincerely,
J. W. Linn.

March 23, 1920.

H. L. Mencken
1524 Hollins Street
Baltimore

The raid on *Jurgen* is the crowning absurdity. The book is not only a sound and honest piece of work; it is also an unquestionable work of art; and perhaps the finest thing of its sort ever done in America. In any civilized country such a book would be received with enthusiasm by every educated man; here it is exposed forthwith to the stupid attack of persons without either intelligence or taste.

The laws under which such outrageous assaults upon decent books and decent authors are made were drawn up by the late Comstock to suit his private convenience, and are so worded that

it is practically impossible for an accused publisher to make an effective defense. They are unjust, oblique and dishonest. I believe that no movement against Comstockery can have any force until these laws are materially amended. It will take a hard fight to amend them, but it can be done. Certainly no Legislature, once it is made aware of the disgusting facts, will ever ratify the proceedings that now go on under them.

If you undertake this agitation you must expect to be attacked viciously. Comstockery is a profitable business, and those who live by it are without decency. But you will be doing a valuable work for American letters. Call on me for any help that I can give.

Sincerely yours,
H. L. Mencken.

9 Arcade House
Temple Fortune, Hendon,
London, N. W. 4

Yes, indeed, you may add my name to the list of protesters against the banning of *Jurgen*. I consider myself to be a very ordinary sort of person, with a mind as shockable as that of either of the Rockefellers, Senior or Junior (particularly Junior), but I could not find anything in *Jurgen* that seemed to me likely to destroy or even to disturb the morals of a Strict and Particular Baptist. The kind of person who might be harmed by it—if there be such a person—would not get beyond the first chapter of the book, which is written for cultured people and not for the rag-tag and bobtail; and in any event, the kind of person who can be harmed by such a book ought to be harmed and, if possible, destroyed. There are two kinds of war: the war waged by evil men on the body, and the war waged by more evil men on the mind. The evil men have had five years in which to destroy the body of Youth: the more evil men, made envious no doubt by the spectacle of their colleagues' success, are beginning a five years' war on the mind. And wherever one looks in the world to-day, one sees attempts being made to control opinion and to suppress thought. We must fight with our backs against the wall in defense of Free Minds. If individuality is to be crushed out of civilization, then we had much better die. In these matters, there must be no nationality—a cursed thing anyhow—but a kindly comradeship. In the fight against the Mind-Murderers, Cabell is not an American, I am not an Irishman—we are simply soldiers of freedom fighting in a renewal of a fight that must be continually fought if men are to remain men and not degenerate into servile things.

Sincerely,
St. John Ervine.

121 Ebury Street
London, S. W. 1

22nd April, 1920

I am very much obliged to you for writing about your struggle in America against societies who disguise themselves as Puritans so that they may blackmail with impunity. . . I have not read it [*Jurgen*], and reading it would not enable me to say anything that I have not already said in my article on the subject printed in the *Century* and reprinted in my last volume entitled *Avowals*. I suppose you will have read my article in the *Century*, and if you have you will have seen that the leading members of these societies are generally libertines of the worst kind, and you will also have seen how a case can always be won against these societies if it is fought wisely, and how these cases should be fought. I have signed the paper which you sent me, and shall always be glad to hear from you on this or any other subject in which you are interested. You say you are sending me under separate cover a pamphlet published by the society entitled: *Morals, not Art or Literature*, but the pamphlet has not arrived; I am sorry, for no doubt I should have found something interesting in it.

Truly yours,
George Moore.

121 Ebury Street
London, S. W. 1

27th May, 1920.

I received your letter dated the seventh of May a few days ago (the postal service appears to get worse). The state of things that you describe seems to me to call for radical measures. Literature cannot be allowed to provide a quarry for the indecent-minded and the blackmailer, one following money and the other perverted sexual excitement. Something will have to be done, and the sooner public attention is called to the scandal the better. The way to do this would be to summon the publisher of Shakespeare and the Bible, and to ask publicly in court why these books should be exempt; if they contain matter injurious to the public health they must be stopped, and it's no excuse to plead that they are well written, life being more important than literature. I think of no other way except this that will bring about a change in the law.

Truly yours,
George Moore.

LETTERS TO THE PUBLISHER

The following letters, addressed to the publisher of "*Jurgen*," are here reprinted with the kind permission of the writers and of the publisher :

15 West 67th Street

February 17, 1920

We want to congratulate you for publishing that remarkable book, *Jurgen*, of James Branch Cabell, and add our opinion, for whatever it may be worth, to the opinion of those who admire it and are protesting against the Censor's attack upon it.

Such an attack is based, we suppose, on the law which prescribes that: "The test of obscenity within the meaning of the statute is whether the tendency of the matter charged as obscene is to deprave or corrupt the morals of those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall."

According to this law, the factors which determine whether a book can be published or not are "the minds that are open," etc., a definition which includes the immature and degenerate minds, so that the culture of a people is subordinated to the requirements of immature and degenerate minds, in which case the word "culture" becomes synonymous with immorality and must cease to exist with what it connotes.

Strangely enough, the type of mind with which the law and the Censor are in such close sympathy has always been and is averse from the intellectual effort required for the understanding and appreciation of a work of a highly intellectual order, so that it is automatically protected from what might affect its morbid condition in a work of this kind.

It is strange, therefore, that a book like *Jurgen* should have been read at all by the agent who is in so close a sympathy with immature and degenerate minds—a book of which Hugh Walpole, an eminent writer, says: "*Jurgen* is surely a book that should make Americans proud. I am delighted with its delicacy and good-temper and tenderness, its fancy and its wit. If Americans are looking for a book to show to Europe, here it is."

But, then, while there are American artists and Americans who appreciate art, their number is far from sufficient to offset the mass of those who, while advertising so loudly the "idealism" of America, are really so devoid of it as to stifle or drive out of their country those who could best inspire it.

This cannot be called an exaggerated statement, as they have so driven out already such men as Stephen Crane, Harris Merton Lyon, John Curnos, Henry James, Whistler, John Sargent, Shannon and many others. Can we wonder about it when the expression of the artist is subjected to the standard that fits immature and degenerate minds?

Strangest of all, however, is the erratic action of the Censor who vents his thunder against *Jurgen*, a phantasy made of poetry, philosophy and the sanest and most varied humor, which at its broadest never seeks to make sensuality attractive but ridiculous, a book which rises to the height of permanent achievement above the stream of mediocre literature flooding our times. This book the Censor wishes to suppress when he has allowed a book as repulsively obscene as Freud's *Leonardo da Vinci* to circulate freely for some years past, to "fall into the hands of those whose minds are open to such influences."

It seems a pity that if literary ignorance, lack of culture and lack of information are to be the standards required for the control over literature in this country, there should not be at least some sort of limitation to their powers of destruction.

Very truly yours,
Amelie Rives Troubetzkoy,
Pierre Troubetzkoy.

**PENNSYLVANIA STATE BOARD OF CENSORS OF MOTION
PICTURES**
Projection Rooms
1025 Cherry Street
Philadelphia

March 1, 1920.

In *Jurgen* Mr. Cabell's symbolism is at times phallic, but his narrative is so far above the understanding of any but the highly sophisticated that in my opinion no conceivable injury could result from its public circulation. It is safe to say that not another person in our English speaking and English writing world could think in such terms and set down so altogether a remarkable piece of literature. In this book he ranges the whole firmament of mythology and romance. To nine out of ten persons it is and will remain as incomprehensible as Greek. It is for the enjoyment of rare souls whose reading has been wide and whose tastes are unusual, caviar to be attacked lightly and joyously by the epicure. No one else would seem to have any business with such a book.

Cabell's women are intangible creatures so far removed from daily human form that they cannot be made to fall under the rules established for the world that we know about. It is difficult then to know on what grounds he should be condemned for impropriety.

Sincerely yours,
Ellis P. Oberholtzer.

18 Upper Fitzwilliam Street,
Dublin

10th February, 1920.

Your letter of the 16th January, announcing *Jurgen* as the latest victim of Comstockery, amazed me. I have been through the book again in search of passages likely to offend even the most prurient puritan, for on first reading nothing of the kind had struck me. All I can say is that only the logic which would bowdlerize the Bible or classical mythology could take offense at *Jurgen*. It is a delightful fantasia, a charmingly sophisticated fairy tale, but a fairy tale nevertheless. To inject into that world of myth, where Mr. Cabell's fancy plays so skillfully, the crude solemnities of Methodist morality is the supreme act of philistinism. I hope that you will be properly supported in an attempt to vindicate the rights of literature, for never was there a clearer case of the issue which must be faced, if art in America is ever to escape the tutelage of the æsthetically blind. *Jurgen* is not even a Dreiserian chaos of contemporary realism, where the pious stenographer might find some incitement to a life of pleasure. Its action lies outside of time and space, far beyond good and evil; obviously so must the morality (if any) which is read into it. It seems to me as ludicrous to criticise *Jurgen's* actions as to blush at the perversities of Leda, or to ostracize Pasiphae on the grounds of immorality. Except that the good pawnbroker did not observe the continence alleged to be the ideal of all true Presbyterians, there is nothing to be said against him which would not apply to every personage in the legendary lore of most civilized countries. There is no scene which could be described, in my opinion, as deliberately voluptuous, or specifically obscene. These are the counts, I understand, on which certain masterpieces have from time to time been indicted.

With every good wish for your success in the fight which I hope you will make on behalf of Mr. Cabell in particular and the liberty of the artist in general,

I remain,

Yours sincerely,

Ernest A. Boyd.

New York, 28 January, 1920.

I hear *Jurgen* is suppressed, but I hope you are going to fight it tooth and nail because it is really time to clear up the muddle between literature and pornography; and the juxtaposition of *Madeleine* and *Jurgen* is an admirable instance. There are things that the hand of vulgarity must not touch, but there is nothing in human nature that literature cannot sanctify; there's the difference.

Yours very sincerely,

Gilbert Cannan.

ECHOES FROM THE PRESS

THE FOLLOWING ARTICLES APPEARED IN THE NEW YORK
NEWSPAPERS DURING THE EARLY PART OF THE YEAR.
THEY ARE REPRINTED VERBATIM.

THE JUDGING OF JURGEN

Great Tumblebug States His Case for the Court of Philistia

James Branch Cabell

[From the *New York Tribune*, Feb. 8, 1920]

They of Poictesme narrate that in the old days a court was held by the Philistines to decide whether or no King Jurgén should be relegated to limbo. And when the judges were prepared for judging, there came into the court a great tumblebug, rolling in front of him his loved and properly housed young ones.

This insect looked at Jurgén, and its pincers rose erect in horror. And the bug cried to the three judges, "Now by St. Anthony! this Jurgén must forthwith be relegated to limbo, for he is offensive and lewd and lascivious and indecent."

"And how can that be?" says Jurgén.

"You are offensive," the bug replied, "because you carry a sword, which I choose to say is not a sword. You are lewd, because you carry a staff, which I prefer to think is not a staff. You are lascivious, because you carry a lance, which I elect to declare is not a lance. And, finally, you are indecent, for reasons of which a description would be objectionable to me, and which, therefore, I must decline to reveal to anybody."

"Well, that sounds logical," says Jurgén; "but, still, at the same time, it would be no worse for an admixture of common sense. For you, gentlemen, can see for yourselves that I have here a sword and a lance and a staff, and no mention of anything else; and that all the lewdness is in the insectival mind of him who itches to be calling these things by other names."

The judges said nothing as yet. But they had guarded Jurgén, and all the other Philistines stood to this side and to that side with their eyes shut tight and saying in unison, "We decline to look, because to look might seem to imply a doubt of what the tumblebug has said. Besides, so long as the tumblebug has reasons which he declines to reveal, his reasons stay unanswerable, and you are plainly a prurient rascal, who are making trouble for yourself."

"To the contrary," says Jurgén, "I am a poet and I make literature."

"But in Philistia to make literature and to make trouble for yourself are synonyms," the tumblebug explained. "I know, for already we of Philistia have been pestered by three of these makers of literature. Yes, there was Edgar, whom I starved and hunted until I was tired of it; then I chased him up a back alley one night and knocked out those annoying brains of his. And there was Walt, whom I chivvied and battered from place to place and made a paralytic of him; and him, too, I labeled offensive and lewd and lascivious and indecent. Then later, there was Mark, whom I frightened into disguising himself in a clown's suit, so that nobody might suspect him of being one of those vile makers of literature; indeed, I frightened him so that he hid away the greater part of what he had made until he was dead and I could not get at him. That was a disgusting trick to play on me, I consider. Still, these are the only three detected makers of

literature that have ever infested Philistia, thanks be to goodness and my vigilance, but for both of which we might have been no more free from makers of literature than are the other countries."

"Now, but these three," cried Jurgén, "are the glory of Philistia; and of all that Philistia has produced, it is these three alone, whom living ye made least of, that to-day are honored wherever art is honored, and where nobody bothers one way or the other about Philistia!"

"What is art to me and my way of living?" replied the tumblebug, wearily. "I have no concern with art and letters and the other lewd idols of foreign nations. I have in charge the moral welfare of my young, whom I roll here before me, and trust, with St. Anthony's aid, to raise in time to be God-fearing tumblebugs like me. For the rest, I have never minded dead men being well spoken of; no, no, my lad, once whatever I may do means nothing to you, and once you are really rotten you will find the tumblebug friendly enough. Meanwhile, I am paid to protest that living persons are offensive and lewd and lascivious and indecent, and one must live."

Jurgén now looked more attentively at this queer creature; and he saw that the tumblebug was malodorous certainly, but at bottom honest and well meaning; and that seemed to Jurgén the saddest thing he had found among the Philistines. For the tumblebug was sincere in his insane doings and all Philistia honored him sincerely, so that there was nowhere any hope for this people.

Therefore, King Jurgén addressed himself to submit, as his need was, to the strange customs of the Philistines. "Now do you judge me fairly," cried Jurgén to his judges, "if there be any justice in this insane country. And if there be none, do you relegate me to limbo, or to any other place, so long as in that place this tumblebug is not omnipotent and sincere and insane."

And Jurgén waited.

"THE RAINBOW" AND "JURGEN"

Cannan Says Posterity May Take Books Now Banned

By Gilbert Cannan

'Tis the voice of the sluggard
I heard him complain,
"You have waked me too soon,
You must call me again."

(From the *New York Tribune*, Feb. 8, 1920)

The familiar jingle is the best possible diagnosis of the trouble in which those singular beings, D. H. Lawrence and James Branch Cabell, find themselves. Humanity's chief trouble is inertia, and those inconvenient persons who attempt to break it are frequently themselves broken. However, let us, above all, be good-tempered about it. If posterity wants *Jurgén* and *The Rainbow*, posterity will print them. The present generation does not want them because they are in advance of current morality, and those whose idiosyncrasy it is to care for morals, to the exclusion of good sense and every other social consideration, demand their suppression.

In these matters there is no better text than that supplied by William Shakespeare in the line:

"Love is all truth; lust is all forged lies."

It may or it may not be a good thing to suppress vice. Personally as a libertarian, I incline to the view that every attempt to suppress only increases its frenzy, for, as they say, murder will out; but it is important that those who believe in attempting to suppress vice should learn to distinguish it from truth, otherwise they are apt to tamper not with the debauches of the human mind, but with its means of expression, than which it has no other means of development. Humanity wants to know the facts about itself and the need increases with its knowledge about the facts of everything else. Every new invention, every great social development imposes upon the writing artist a higher standard of integrity and urges him away from the charm and toward the necessity of his work. A modern novelist, living in a time of great stress and profound change, can no longer accept the convention which deprived the characters in a work of fiction of both passion and intelligence in order that novels might be read as easily and indolently as the newspapers, until at last novels came to be written as easily and indolently as they were read. Compared with such novels books like *Jurgen* and *The Rainbow* seem to be startling and violent. The men who wrote them have actually had the audacity to ignore the lassitude of the modern reader. They have discarded the superficial view of human relationships and have had the temerity to explore them. Lawrence insists upon their intensity, Cabell upon their transience; but both are good artists and are reverent before the wonder and mystery of their material. Unfortunately, the indolent modern mind, in the sluggishness of its decadent Puritanism, sees none of the reverence and is aware only of what seems to it the painful emphasis on these things, passion and intelligence, which it has for so long ignored. It is thrown into panic and imagines that here is an attack upon society. But artists do not attack society; they leave that to the prophets and social reformers. The artist's loyalty is to art and that loyalty is a thing that the layman cannot possibly understand. The layman, therefore, should leave well alone and not attempt the impossible. There is no earthly reason why he should read a book that offends him, but there is every reason why he should not attempt to prevent others reading it who wish to do so, for the social implication is profound and serious. Every clamor over the alleged indecency of a work of art rouses in the innumerable indolent readers of the newspapers the always present hunger for prurience which there are, in all conscience, books enough to satisfy. A work of art—like *Jurgen* or *The Rainbow*—is protected—if there were none of this unreasoning and well-intentioned interference—by the fact that it is a work of art and outside the range of the indolent reader. When there is interference a work of art is exposed to the insult of being read for what it does not contain—witless salacity.

In salacity salted with wit there is no harm whatsoever—for persons of experience. "Ah!" say the well-meaning and censorious, "but we must protect the innocent." In reply, I would say that the innocent are of all classes of persons the least in need of protection, for their innocence has no clue to the meaning of human expression. All books to them are fairy tales, as witness

Gulliver's Travels. None who has lost his innocence must work cunning upon them . . . good Lord! I remember when I was fourteen, as my father and older brother came home from the theatre singing a plaintive ditty with the refrain "I have fallen through another," asking naively, "Through another what?" and I had grotesque and puzzled visions of a young woman falling through a ceiling or coal hole or down a drain, and even when my brother explained at some length the words had no real and certainly no exciting meaning. And all innocent persons are like that—they have no conception of anything outside their range.

It may be said, on the other hand, that young minds groping out of innocence must be protected. I never knew a young mind that sought out a dirty book without external suggestion, and that external suggestion is invariably supplied with the maximum of force whenever a public outcry is raised against the work of an artist who in his exploration of the mystery of human relationships states candidly and beautifully, passionately or wittily, what he finds there. There is absolutely no other result except that timorous artists may be deterred from honesty, but if they are so timid as all that there is no great loss.

The case of *The Rainbow* is of the two the more amusing, because if ever there was a morose, hard-boiled Cromwellian Puritan it is D. H. Lawrence, and for the Puritans to assail him is for them to show how little grasp they have of the logic of their own case. In *Jurgen*, on the other hand, the Puritan may find his natural enemy, the aristocratic individual who does "not give a single damn," and then the Puritan is baffled, for no attack can impinge upon that individual's imperturbability.

The matter is serious and worth writing about at length, because modern society is hectic and confused for lack of the authority which only art can give it. Indeed, these periodic assaults upon books which are a few years ahead of their time are perverted expressions of the need of that authority which is withheld by, among other things, this pathetic confusion of pornography and literature. There should be a rallying of writers everywhere to make it plain to the public that literature cannot possibly be pornographic, and that there is no simple fact of human nature that cannot find expression in art. A dirty book is, God save us! a thing of nought. It must perish of its own dreariness. A work of art is a thing of vital necessity and society tampers with it at its peril.

IS ANY BOOK SAFE?

(From the Editorial Page of the *New York Times*, March 28, 1920)

The New York police do not intend to let the Society for the Suppression of Vice get all the credit for censoring American literature. Mr. Sumner of the Vice Society lately prosecuted with success the head of one of the best known of American publishing houses for the issuance of a book which was accepted and published without the knowledge of the defendant, a book most of whose readers must have been surprised to learn that a court had regarded it as under the ban of the law. This encouraged Mr. Sumner; he brought proceedings against the publishers of a book which is regarded by a great many lovers of literature as one

of the most notable American works of recent years. This case has not yet come to trial; but the jealousy of the police seems to have been excited. Was it to be said that anybody had a more sensitive nose than the police vice squad?

It was not to be said very long. Another book, issued by a firm which has given many valuable books to the public, was found obnoxious to the moral sense of a detective, and the publishers must appear in court tomorrow. Persons who occasionally like to read books may be interested in the section of the penal law which says that

“A Magistrate * * * upon complaint that any person within his jurisdiction is offending against the provisions of this article, supported by oath or affirmation, must issue a warrant.”

And this warrant, to condense the legal phraseology, directs police officers to seize all copies of the book, or picture, or whatever may be regarded as obscene by the man who made the complaint, and deliver them to the District Attorney to be held until trial. If the purveyor of the books or pictures is convicted, the offensive articles are destroyed, unless retained for the sake of evidence by the Society for the Suppression of Vice; if the seller is acquitted, his property is, of course, restored.

Upon complaint the Magistrate must issue a warrant—this means that if any individual sees, or professes to see, indecency in any book, the sale of that book is stopped until the seller has been tried. If any Magistrate and three Judges of Special Sessions agree with the man who makes the complaint, the book is suppressed for good. Fortunately the courts have generally been far more reasonable than the statute, which despite intelligent Judges goes a long way to restricting the reading of the public to such books as do not seem objectionable to any man who makes a living by looking for unlawful publications. The public morals must be preserved, but surely there is some wiser way of preserving them than this.

LIFT LITERARY LOAD OFF POLICE

Authors and Publishers Plan Censor Board to Pass on Books and Let Coppers Have More Time to Hunt Thieves

(From the *New York Evening Sun*, March 8, 1920)

If certain publishers and authors have their way the New York Police Department will be a much more attractive place of employment than heretofore. No member of the department, not even members of the vice squad, will be required to read a questionable book in pursuit of duty.

Instead of calling for volunteer book readers who will undertake to ferret out the evil in a volume, even at the risk of their own morals, the head of the vice squad may be able merely to smile, shrug his shoulders and send the book on to a board of censors—unless, of course, heroic policemen should insist on reading the book after hours in their capacity as self-sacrificing citizens.

Boni & Liveright, publishers of *The Story of a Lover*, an anonymously written tale, which Patrolman John F. Pooler found contained words whose employment he thought were prejudicial to the interests of the general public, originated the board of censorship idea. The board, in their opinion, should

include representatives of various organizations of culture and morals, including the clergy, and would be able to lift from the police their literary burdens. But their suggestion is not the only one advanced for the solution of this literary problem.

Campaign to Change Law

A committee of three authors, Barrett H. Clark, writer on dramatic subjects; E. H. Bierstadt, author of the *Life of Dunsany*, and Sidney Howard, magazinist, is seriously arranging to place the censorship law of the State before the general public with a view to having the law amended. The committee was organized at first to protest against the New York Society for the Suppression of Vice in its action to prohibit the publication of Cabell's *Jurgen*. Action against the publishers of this book, the Robert M. McBride Company, was begun by the society in January. The case has not yet been decided.

"We have come to the conclusion that sporadic efforts for the righting of individual cases and against particular societies are not enough," said Mr. Clark, secretary of the committee. "We are now preparing to attract public attention to the need for an amendment to the law. Any work under the sun could be censored under the existing law, provided any one cared to bring it to the attention of the authorities."

It was called to Mr. Clark's attention that a recent reviewer had declared that only the Rollo Books and *Esther Reid, Yet Speaking* would be allowed to circulate freely under the act, but he expressed a decided doubt as to whether even these volumes would be found innocuous if thoroughly raked for wrong thoughts and words under the provision of the statute.

Writers' Club Assails System

The Writers' Club, whose president is Walter Adolphe Roberts, a magazine editor, passed a resolution at its last meeting denouncing the suppression of *Jurgen* and the censorship of books, plays and works of art as conducted by the Society for the Suppression of Vice. "Vicious, unintelligent and destructive to American liberty and honest literary craftsmanship," is the Writers' Club statement in regard to the censorship of the vice society.

Other books which have been brought into court in recent years either by the police or the Society for the Suppression of Vice are Theodore Dreiser's *The Genius*, published by the John Lane Company; *Madeleine*, published by Harper & Bros., and Guido Bruno's *Edna, the Girl of the Street*.

Meanwhile John S. Sumner, executive secretary of the Society for the Suppression of Vice, isn't a bit disturbed by these efforts of writers and publishers to establish a different system of literary censorship.

"A Board of Censors might be a very good thing," said Mr. Sumner placidly, "it would be likely to restrain some of the rash publishers. Of course it would only be advisory and could have no binding effect on the police or courts."

APPENDICES

APPENDIX A

The Laws. Penal Code of the State of New York

§1141. I. "A person who sells, lends, gives away or shows, or offers to sell, lend, give away, or show, or has in his possession with intent to sell, lend or give away, or to show, or advertises in any manner, or who otherwise offers for loan, gift, sale or distribution, any obscene, lewd, lascivious, filthy, indecent or disgusting book, magazine, pamphlet, newspaper, story paper, writing, paper, picture, drawing, photograph, figure or image, or any written or printed matter of an indecent character; or any article or instrument of indecent or immoral use, or purporting to be for indecent or immoral use or purpose, or who, designs, copies, draws, photographs, prints, utters, publishes, or in any manner manufactures, or prepares any such book, picture, drawing, magazine, pamphlet, newspaper, story paper, writing, paper, figure, image, matter, article or thing, or who writes, prints, publishes, or utters, or causes to be written, printed, published or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting so to do, where, how, of whom, or by what means any, or what purports to be any, obscene, lewd, lascivious, filthy, disgusting or indecent book, picture, writing, paper, figure, image, matter, article or thing, named in this section can be purchased, obtained or had; or who has in his possession, any slot machine or other mechanical contrivance with moving pictures of nude or partly denuded female figures which pictures are lewd, obscene, indecent or immoral, or other lewd, obscene, indecent or immoral drawing, image, article or object, or who shows, advertises or exhibits the same, or causes the same to be shown, advertised or exhibited, or who buys, owns or holds any such machine with the intent to show, advertise or in any manner exhibit the same; or who

II. "Prints, utters, publishes, sells, lends, gives away or shows, or has in his possession with intent to sell, lend, give away or show, or otherwise offers for sale, loan, gift or distribution, any book, pamphlet, magazine, newspaper or other printed paper devoted to the publication, and principally made up of criminal news, police reports, or accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime; or who

III. "In any manner, hires, employs, uses or permits any minor or child to do or assist in doing any act or thing mentioned in this section, or any of them, is guilty of a misdemeanor, and, upon conviction, shall be sentenced to not less than ten days nor more than one year imprisonment, or be fined not less than fifty dollars, nor more than one thousand dollars, or both, fine and imprisonment for each offense."

United States Criminal Code

Act Mar. 4, 1909. Sections 211, 212, 245. Chapter 321, 35. Stat. L. 1129.

§211. "Every obscene, lewd, or lascivious, and every filthy book, pamphlet, picture, paper, letter, writing, print, or other publication of an indecent character, and every article or thing designed, adapted, or intended for preventing conception or producing abortion, or for any indecent or immoral use; and every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for preventing conception or producing abortion, or for any indecent or immoral purpose; and every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information directly or indirectly, where, or how, or from whom, or by what means any of the hereinbefore mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means conception may be prevented or abortion produced, whether sealed or unsealed; and every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device, or substance; and

every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can be used or applied for preventing conception or producing abortion, or for any indecent or immoral purpose; and every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing, is hereby declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier. Whoever shall knowingly deposit, or cause to be deposited for mailing or delivery, anything declared by this section to be nonmailable, or shall knowingly take, or cause the same to be taken, from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

§212. "All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, or any postal card upon which, any delineations, epithets, terms, or language of an indecent, lewd, lascivious, obscene, libelous, scurrilous, defamatory, or threatening character, or calculated by the terms or manner or style of display and obviously intended to reflect injuriously upon the character or conduct of another, may be written or printed or otherwise impressed or apparent, are hereby declared nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postmaster-General shall prescribe. Whoever shall knowingly deposit or cause to be deposited, for mailing or delivery, anything declared by this section to be nonmailable matter, or shall, knowingly, take the same or cause the same to be taken from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

§245. "Whoever shall bring or cause to be brought into the United States or any place subject to the jurisdiction thereof, from any foreign country, or shall therein knowingly deposit or cause to be deposited with any express company or other common carrier, for carriage from one State, Territory or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States through a foreign country to any place in or subject to the jurisdiction thereof, or from any place in or subject to the jurisdiction of the United States to a foreign country, any obscene, lewd, or lascivious, or any filthy, book, pamphlet, picture, paper, letter, writing, print, or other matter of indecent character, or any drug, medicine, article, or thing designed, adapted or intended for preventing conception, or for producing abortion, or for any indecent or immoral use, or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of the hereinbefore-mentioned articles, matters, or things may be obtained or made; or whoever shall knowingly take or cause to be taken from such express company or other common carrier any matter or thing, the depositing of which for carriage is herein made unlawful, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both."

APPENDIX B

The little booklet which has already been referred to offers a wealth of suggestive material in the form of decisions and interpretations. Some of these are reprinted below. In the same pamphlets there appears a page presumably from the hand of Anthony Comstock. It is worth pondering over:

MORALS

It is a Question of Peace, Good Order and Morals, and not of Art, Literature or Science

Art for art purposes in an art gallery, medical works for medical and scientific men, and standard literature for literary persons and students, does not mean that the nude in art, anatomical plates from medical works, nor bawdy and obscene extracts from standard authors have the right to be placed upon indiscriminate exhibition or sale, nor placed before immature minds, when such exhibition, sale or indiscriminate circulation tends to endanger the morals of the young.

For instance, what can be more chaste, innocent or freer from guile, than a young girl in the privacy of her room. She may, as occasion requires, divest herself of all apparel. But that is not a picture for a "Peeping Tom" to desecrate by looking through a keyhole, or under a window shade or curtain.

If a person should give such an exhibition, and call attention of young men to it, there would be an outcry of indignation at once. While the picture might be chaste, innocent and beautiful in itself, the effect would certainly be demoralizing. It would tend to corrupt the morals of young men and boys, inflame their passion, and cause loose thoughts. Such a display would not be tolerated for a day.

So the practice of photographing the nude figures from beautiful works of art for mercenary purposes, and placing these figures upon indiscriminate sale, is an assault upon the minds and morals of our youth.

It practically unclothes the sacred form of woman, exposing her to public gaze. It is invading the sacred domain of woman, and degrades woman in the common mind. It is supplanting the spirit of reverence and chivalry for woman with loose and degrading thoughts. It is a curse to young men.

These pictures, if works of art, are privileged to occupy the select place which art has chosen for her abode, but acquire no more right to a public sale or display, than a chaste young girl would have to make a public exhibition of her nude form from shop window or sidewalk.

The law forbids such exhibitions in the interests of public morals.

The decisions and interpretations follow:

(1) *Regarding the United States Criminal Code*

"The guilty intent appears from the fact of the deposit of such matter by one knowing what articles he deposits. The evidence of the crime is, therefore, complete when the act and the knowledge is shown. (U. S. vs. Bott, 11 Blatch, c.c., pp. 348-9.)

Observation: Since it is impossible to determine, in the case of books, what is or is not "obscene," etc., the "knowledge" referred to must be proved *ex post facto*. Not until the defendant is tried is the book adjudged indecent or not.

(2) Regarding the New York State Penal Code

"It would, we conceive, be no answer to an indictment under the statute for the sale of an obscene picture, that it was sold to a person not liable to be injured by it, or that it was a picture, in respect to execution, of distinguished merit." (Peo. vs. Muller, 96 N. Y., 413.)

Observation: The author of the pamphlet prefaces the above (besides indicating the passage noticed with italics), as follows: "Fortunately for the community, the law suffers no apology to obscenity writers, makes no exceptions in their favor."

Must then every work of art be such as could arouse no evil impulse in the young, the susceptible, the corrupt?

"The courts are guardians of public morals." (Com. vs. Sharpless, 2 Sergt. & Rawl., 102-105; 2 Arch. Cr. Pr. & Pl. 218.—Queen vs. Hicklin, 3 Eng. L. R. Q. B.)

"It is claimed that the author of this book is an artist in his line; 'achieved in literary work,' as counsel for defendant says in his brief.

"Justice Brady settled this point in charging a jury in a case where *Art* was involved:

"The world is open to the artist. He may represent objects and subjects in whatever colors he may see fit to adopt, but his methods must commend themselves to the morality of the people. *He must see to it that they do not invade the law of public morals, and, according to some writers, endanger the public peace.*" (Peo. vs. Muller, Appeal Papers to Sup. Ct. [approved by 32 Hun, 408; 96 N. Y.])

"The Supreme Court further said:

"The object of the law was to protect public morals, especially of that class of the community whose character is not so completely formed as to be proof against the lewd effects of the pictures, photographs and publications prohibited."

"And where it may be violated, that violation would in no sense be relieved by proof that similar acts were tolerated by the public authorities of other states or countries." (Ibid., 213.)

"The Court of Appeals, by a unanimous opinion, affirmed the judgment and rulings in the foregoing case, and said:

"We find no error in the record." (Peo. vs. Muller, 96 N. Y., p. 413.)

"In the Muller case eight of the original pictures, it was admitted by the prosecution, were exhibited in the Salon of Paris, France; the other it was proven was exhibited at the Centennial at Philadelphia, Pa., in 1876."

"One Holmes was indicted under Common Law for publishing an obscene print or book.

"The second count of the indictment did not set forth the book, or any part thereof, but alleged that it was so obscene that it would be offensive to the court, and improper to be placed on the record thereof, and therefore the jurors did not set it forth in the indictment."

"The fifth count described the print.

"After conviction the defendant moved in arrest of judgment, because no part of the books was set forth, etc.

"Held:

"The second and fifth counts in the indictment are certainly good, for it can never be required that an obscene book and picture should be displayed upon the record of the court, which must be done, if the descriptions in these counts are insufficient. This would be to require that the public itself should give permanency and notoriety to indecency in order to punish it." (1821,—Com. vs. Holmes, 17 Mass., 336.)"

"Judge Phillips, in charging a jury, referred to the fall of Adam and Eve, and their being driven out of the Garden of Eden. He then said:

'From that day to this, civilized man has carried with him a sense of shame, the feeling that there were some things on which the eye, the mind, should not look; and where men and women become so depraved by the use, or so insensate from perverted education, that they will not veil their eyes, nor hold their tongues, the government should perform the office for them in protection of the social compact and the body politic.' (U. S. vs. Harmon, 45 F. R., p. 423.)"

"Test of Obscenity

"In the case of Queen vs. Hecklin, the defendant had been convicted for disposing of a certain obscene book or pamphlet. The prosecution conceded that the book was not sold for a profit, but that Hecklin, as a member of an Anti-Romanist Society (the Protestant Electoral Union), procured and circulated the said books without a profit, among adults, for the purpose of exposing the alleged errors of the Roman Catholic religion, especially in the matter of the confessional. Hecklin having been convicted appealed.

"Lord Chief Justice Cockburn, and the full Bench present, laid down the following test of obscenity. He said:

'I think the *test of obscenity* is this: whether the *tendency* of the matter charged as obscenity, is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.

'Now with regard to this work, it is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thought of a most impure and libidinous character.' (Queen vs. Hecklin, 3 Eng. L. R. Q. B., 360.)

"In U. S. vs. Bennett, tried in U. S. Circuit Court in and for the Southern District of New York, Judge Benedict, after reciting the foregoing test, further said:

'Now, gentlemen, I have given you the test; it is not a question of whether it would corrupt the morals, tend to deprave your minds, or the minds of every person; it is a question whether it *tends* to deprave the minds of those open to such influences, and into whose hands a publication of this character might come.

'It is within the law if it would suggest impure and libidinous thoughts in the young and inexperienced.' (U. S. vs. Bennett, 16 Blatch, p. 362.)"

Observation: Note the Lord Chief Justice's words, "a publication of this sort may fall." It is usually assumed by the prosecutors that the book "*will*" fall, and as a result of the advertisement afforded it by the trial, it almost invariably *does* fall into the hands of "those whose minds," etc.

"A book, to be obscene, need not be obscene throughout the whole of its contents, but if the book is obscene, lewd, or lascivious or indecent *in whole or in part*, it is an obscene book within the meaning of the law—a lewd and lascivious and indecent book." ([1877] U. S. vs. Heywood, quoted from Official Stenographer's Report in U. S. vs. Bennett, 16 Blatch, pp. 368-9.)

Observation: See the Bible, Genesis, 9:20-25; 16:1-6; 19; 38:4-9; 39:10-13; Romans I, 26-27.

"A book is said to be lewd, which is incited by lust, or excites lustful thoughts, leading to irregular indulgence of animal desires, lustful, lecherous, libidinous.

"A book is lascivious which is lustful, which excites or promotes impure sexual desires.

"A book is indecent which is unbecoming, immodest, unfit to be seen. . . .

"Observations were made in regard to the extent to which these books might be obscene, lewd, lascivious or impure or might excite unlawful or impure desires; and it was said to you, that you might read these books, and they would excite no impure desire in you, no impure thoughts; but that is not a sure criterion, by any means: these books are not sent ordinarily to such people as you. But you may consider whether they are obscene or lewd or lascivious to any considerable portion of the community, or whether they excite impure desires in the minds of the boys and girls or other persons that are susceptible to such impure thoughts and desires.

"If any other standard were adopted, probably no book would be obscene, because there would be some men and women so pure, perhaps, that it would not excite an impure thought; but it is to be governed by its effect upon the community whether it is obscene and is of dangerous tendency in the community generally, or any considerable portion of the community." ([1877] *U. S. vs. Heywood* quoted from Official Stenographer's Report in *U. S. vs. Bennett*, 16 Blatch., pp. 368-9.)

"No matter what the motive or purpose for which they were sent, whether in the real or supposed interest of science, philosophy, or morality, if they are of an obscene character, you should find the defendant guilty." (*U. S. vs. Slenker*, 32 Fed. Rep., 693.)

Observation: See above definitions of obscenity. Elsewhere (at the trial of "one Landis in Philadelphia, 1870) the Appellate Court is quoted as saying to the jury that

"If in their judgment the book was fit and proper for publication, and such as should go into their families, and to be handed to their sons and daughters, and placed in boarding-schools for the beneficial information of the young and others, then it was their duty to acquit the defendant."

"The jury were instructed that it did not matter whether the things published in the book were true, and in conformity with nature and the laws of our being or not. If they were unfit to be published, and tended to inflame improper and lewd passions, it was an obscene libel."

"How would the language—the subject matter— . . . impress and affect the average man and woman of intelligence and sensibility? What is its probable effect upon society in general? How would such language and matter impress a public assembly of decent men and women?" (*U. S. vs. Harmon*, 45 F. R. 418.)

Observation: How would the most sacred and most beautiful and most intimate functions of human life impress a public assembly of decent men and women?

"Language is a vehicle of thought. Chaste words may be applied so as to be understood in an obscene sense by everyone who hears them." (*Edgar vs. McCutchen*, 9 Mo., 768.) "Words, abstractly considered, may be free from vulgarity, yet they may, by reason of the context, manifest to the intelligent apprehension the most impure thoughts and may arouse a libidinous passion more effectually in the mind of a modest woman than the coarse vernacular of the bawd and the pimp. . . . In other words, it is the effect of the language employed, conveying obscure lewd or lascivious suggestion, tainted with immorality and impurity, which is struck at by the statute." (*U. S. vs. Moore*, 129 Fed. 160-1, *Philips*, D. J.—*Missouri*, 1904.)

Observation: The prosecution is permitted to introduce evidence upon the basis of the context. The defense is not.

"It was asked in argument, what remedy there was against works similar to those from which the extracts given in the pamphlet are taken? No such work is now before us judicially, and I pronounce no opinion, therefore, with respect to any such. It is enough to say that it does not follow that because it is a misdemeanor to publish the present pamphlet that it would not also be a misdemeanor to publish such works as those referred to. *In any case, they can afford no argument to justify the present publication.*" (*Steele vs. Bannon*, L. R., 7; C. L., p. 270.)

"Justice Blatchford, in delivering the opinion of the U. S. Circuit Court in *Blanc*, further said, quoting from the charge of Judge Clarke, in *U. S. vs. Heywood*, to-wit.:

"Something was said in regard to other books—that these books are no more offensive than some other books; but you are not sent here to try other books nor to compare this book with other books, and you heard the court rule out all other books. The sole question is whether these books are obscene,

lewd or indecent. Other books may be so, or may not be so. They may or may not have gone in the mail." (16 Blatch., 369.)

And finally:

"The obscenity of a book, alleged to be an obscene libel, does not depend upon its truth or falsity.

"It is a question to be determined by a jury. . . . The character of the book was a question purely for the jury, in which they could not be aided by an expert." (Commonwealth vs. Landis, 8 Phila., R., 453.)

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